# JUSTICE of the PEACE,

#### AND

### PARISH OFFICER.

#### BY RICHARD BURN, CLERK;

One of His MAJESTY'S Justices of the Peace for the County of WESTMORLAND.

The Second Edition, with the STATUTES and adjudged Cases continued to the present Time.

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# Homicide.

OMICIDE in law fignifies the killing of a man by a man. 1 Haw. 66.

And it includes in it, not only petit treason, concerning which fee title Treason; but also the several offences which

are treated of in the following fections.

and to such short I fone when

There is also another kind of untimely death of a man, not properly homicide: when he is killed by a horse, a cart, a tree, or the like, and not by a man; which is called Casual death: for which fee title Deoband.

I. Justifiable homicide.

II. Homicide by misadventure.

III. Homicide by self defence.

IV. Manslaughter.

V. Murder.

VI. Self murder.

#### I. Justifiable bomicide.

1. To make homicide justifiable, it must be owing to some un. On a real new avoidable necessity, to which the person who kills another must be cessity. reduced, without any manner of fault in himself. I Haw. 69.

And there must be no malice coloured under pretence of neceffity; for wherever a person who kills another, acts in truth upon malice, and takes occasion from the appearance of necesfity to execute his own private revenge, he is guilty of murder. 1 Haw. 69.

2. If any evil disposed person shall attempt feloniously to rob Killing robbers or murder any person in any dwelling house or highway, or fe- and burglars. loniously attempt to break any dwelling house in the night time, and shall happen in such felonious intent to be slain; the slayer shall be discharged, and shall forfeit no lands nor goods. 24 H. 8.

3. If trespassers in a forest, chase, park, or warren, or any Trespassers in inclosed ground wherein deer are kept, will not render themselves parks. to the keepers, upon a hue and cry made to fland to the king's peace, but fly from, or defend themselves against them, they may be flain by them. 1 Haw. 71.

4. If rioters, or forcible enterers or detainers, stand in oppo-Rioters, fition to the justices lawful warrant, and any of them is slain; it is

no felony. Hale's Pl. 37.

5. If

### Honnicide.

Houseburners.

5. If a man come to burn my house, and I shoot out of my house, or issue out of my house, and kill him; it is no felony. Hale's Pl. 39.

Ravishers.

6. If a woman kill him that affaulteth to ravish her; it is no

felony. Hale's. Pl. 39.

Felons refufing to be arrefted. 7. If a person having actually committed a selony, will not suffer himself to be arrested, but stand on his own desence, or sly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons, or publick officers, with or without a warrant from a magistrate; he may be lawfully slain by them. I Have. 70.

Suspected felons refusing to be arrested. 8. So if a felony hath actually been committed, and an officer or minister of justice, having lawful warrant so to do, arrest an innocent person, and such person assault the officer or minister of justice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him, it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party so assaulting, or offering to sly away, and is killed, shall forfeit his goods. 3 Inst. 56.

Felon escaping.

9. Also if a person arrested for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case likewise, there must have been a felony actually committed. Hale's Pl. 36, 37.

Felon breaking gaol.

10. Also if a criminal endeavouring to break the gaol, as-fault his gaoler, he may be lawfully killed by him in the affray.

1 Haw. 71.

Refifting a civil process.

11. In civil causes; Altho' the sheriff cannot kill a man, who slies from the execution of a civil process; yet if he result the arrest, the sheriff or his officer need not give back, but may kill the assailant. Hale's Pl. 37.

So if in the arrest and striving together, the officer kill him, it

is no felony. Hale's Pl. 37.

Trial and difcharge. 12. In all these cases the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed, without any forseiture, or pardon purchased. Hale's Pl. 38.

#### II. Homicide by misadventure.

Chancemedley.

because authors do not seem to be agreed whether it is to be applied to homicide by misadventure, or to manslaughter. I.d. Coke and Mr. Hawkins seem to understand it of manslaughter; I.d. Hale, and others, of homicide by misadventure. The original meaning of the word seems to savour the former opinion, as it signifies a sudden or casual meddling or contention; whereas homicide by misadventure supposeth no previous meddling or falling out. But the same author sometimes, in different places, applies it to both of them promiscuously.

2. Homicide by misadventure is, where a man is doing a law- What is homiful act, without intent of hurt to another, and death cafually en-cide by mifad-Hale's Pl. 31.

3. As where a labourer being at work with a hatchet, the head Cases of homiflies off, and kills one who stands by. I Haw. 73.

4. Or where a third person whips a horse, on which a man is venture. riding, whereupon he springs out, and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow of manslaughter. I Haw. 73.

5. But if a person, riding in the street, whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder

in the rider. 1 H. H. 476.

6. If a person drives his cart carelessly, and it runs over a child in the street, if he have seen the child, and yet drives on upon him, it is murder; but if he faw not the child, yet it is manflaughter; but if the child had run cross the way, and the cart ran over the child before it was possible for the carter to make a stop,

it is by misadventure. 1 H. H. 476.

7. It is faid before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a person, meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a bush; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. 3 Inft. 56.

8. So if one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in bim, this is by misadventure; for it was not unlawful to shoot at the wild fowl: But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a

man, this had been murder; for the act was unlawful. 3 Inft. 56.

9. Also, if there be an evil intent, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party flain. 3 Inft. 57.

10. And it is a general rule, in case of all felonies; that whereever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony

which he actually commits. 1 Haw. 74.

11. But in all the cases above, if it doth only hurt a man, by fuch an accident, it is nevertheless a trespass; and the person hurt shall recover his damages: for tho' the chance excuse from felony, yet it excuseth not from trespass. 1 H. H. 472.

12. If a person escape that hath killed another by misadven- Escape.

ture, the town shall be amerced. 2 Inft. 149.

13. This

### Homicide.

This kind of felony.

Forfeiture.

13. This homicide is not felony, because it is not accompanied with a felonious intent, which is necessary in every felony. 1 Haw. 75.

14. But yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the affizes. I Haw. 75.

But if he is taken only on a flight suspicion, the justices of the

peace may bail him. 2 Haw. 105.

15. Altho' this homicide is not properly a man's crime, but his misfortune; yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of man, and to the end that men should use all care, diligence, and circumspection in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon, which he shall have out of the chancery of course. 1 H. H. 477, 492. 1 Haw. 76.

#### III. Homicide by felf defence.

Se defendende, what.

Cases of se defendende.

1. Homicide in a man's own defence seems to be, where one who hath no other possible means of preserving his life from one who combats with him on a fudden quarrel, kills the person by whom he is reduced to fuch an inevitable necessity. 1 Haw. 75.

2. And not only he, who upon an affault retreats to a wall, or fome fuch strait, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he, who being assaulted in such a manner, and in fuch a place, that he cannot go back without manifestly indangering his life, kills the other without retreating at all. 1 Haw. 75.

3. And notwithstanding a person who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of

homicide se defendendo only. 1 Haw. 75.

4. But if the mortal wound was first given, then it is man-

flaughter. Hale's Pl. 42.

5. And an officer who kills one that refifts him in the execution of his office, and even a private person that kills one who seloalously affaults him in the highway, may justify the fact, without ever giving back at all. 1 Haw. 75.

6. But if a person upon malice prepense strike another, and then fly to the wall, and there in his own defence kills the other, this

is murder. Hale's Pl. 42.

7. Hereof there can be no accessaries, either before or after the fact; because it is not done with a felonious intent, but upon inevitable necessity. 3 Inft. 56.

8. If a man escape, that hath killed another in his own de-

fence, the town shall be amerced. 2 Infl. 315.
9. A person guilty hereof is not bailable by justices of the peace; but they must commit him till the assizes. I Haw. 76.

But otherwise it is, if he is taken only on flight suspicion. 2 Haw. 105.

Bail.

Escape.

Acceffaries.

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act of violence was offered, whereof the law can take notice.

1 H. H. 429.

12. If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepensed; for the fetching of the weapon, and going into the field, is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay tho' it were the same day, if there were such a competent distance of time, that in common presumption, they had time of deliberation, then it is murder.

3 Inst. 51. 1 H. H. 453.

3 Infl. 51. 1 H. H. 453.

13. And the law fo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden, that the seconds of the party slain are likewise guilty

as accessaries. 1 Haw. 82.

14. If a physician or surgeon gives a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and contrary to the physician or surgeon's expectation it kills him, this is no homicide. And Lord Hale says, he holds their opinion to be erroneous, who think that if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is felony. These opinions (he says) may caution ignorant people not to be too busy in this kind with tampering with physick, but are no safe rule for a judge or jury to go by. 1 H. H. 429.

15. But if a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given to cure her of a disease, but unlawfully to destroy the child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother it is murder. 1 H. H.

410.

16. Also if a woman be quick with child, and by a potion or otherwise, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child, this is a great misprission, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cause, this is

murder. 3 Inft. 50.

Lord Hale says, that in this case it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke given to the mother, yet it is not homicide. 1 H. H. 433. And Mr. Dalton says, whether it die within her body, or shortly after her delivery, it maketh no difference. Dalt. 332. But Mr. Hawkins says, that (in this latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 Haw. 80.

17. Also it seems agreed, that where one counsels a woman to kill her child when it shall be born, who afterwards doth kill it in pursuance of such advice, he is an accessary to the musder.

1 Haw. 80.

### Domicide.

18. By the 21 7. c. 27. If a woman be delivered of a bastard child, and she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herfelf, or the procuring of others, fo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; she shall suffer death as in case of murder, except she can prove by one witness that it was born dead.

19. Lord Hale fays, if a man have a beaft, as a bull, cow, horfe, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for

If he have no particular notice that it did any such thing before, yet if it is feræ naturæ, as a lion, a bear, a wolf, yea an ape or a monkey, if it get loofe and do harm to any person, the owner is liable to an action for the damage:

If he have notice of the quality of any fuch his beaft, and use all due diligence to keep him up, yet he breaks loose and kills a man, this is no felony in the owner, but the beaft is a

deodand:

But if he did not use that due diligence, but thro' negligence the beaft goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manslaughter in the owner:

But if he did purposely let him loose or wander abroad, with defign to do mischief, nay tho' it were with design only to fright people and make sport, and it kills a man, it is murder in the

owner. 1 H. H. 431.

Persons present committed.

Escape.

20. They that are present when any man is slain, and do not when murder is their best endeavour to apprehend the murderer or manslayer, shall

be fined and imprisoned. 3 Inft. 53.

21. If a murder be committed in the day time, in a town not inclosed, and the murderer escape, the township shall be amerced: but if inclosed, whether the murder be in the night or day, the town shall be amerced. 3 Inft. 53.

Where the death in another.

22. Where any person shall be feloniously stricken or poisoned stroke is in one in one county, and die in another county; the offender may be county, and the indicted in the county where the party dies, before the coroner, justices of the peace, or other justices. 2 & 3 Ed. 6. c. 24. f. 2.

Where the printhe offence in the accessary in another.

23. Where a murder is committed in one county, and a percipal committeth fon is acceffary in another county, he may be indicted in the county where he was accessary, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 Ed. 6. c. 24.

Where the land, and the death out of England; and vice verfa.

24. If any person be feloniously stricken or poisoned upon the stroke is in Eng- sea, or out of England, and shall die of the same in England; or shall be feloniously stricken or poisoned in England, and shall die of the same on the sea, or out of England; the offenders and accessaries may be indicted in the county where any such death, stroke, or poisoning shall happen, before the coroner, justices of the peace, or other justices; and the judges of affize, or any superior court, to which the indictment shall be removed, shall proceed thereon accordingly. 2 G. 2; c. 21.

to. Lord Coke (2 Infl. 316.) fays, that the justices of the peace Power of justices cannot take an indictment of killing a man fe defendendo; because of the peace. their commission is not general, as is that of the justices of gaol delivery, but limited: But Lord Hale (2 H. H. 46.) holds the contrary.

11. A person convicted hereof, shall not be discharged out of Forfeiture, prison but upon bail, and shall forfeit all his goods, altho' the cause was inevitable. And this, because of the great regard which the law hath for the life of man; and also, by reason that the law intends it had a beginning upon an unlawful cause: for quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on both sides. But he shall have his pardon out of the chancery of course. 3 Inst. 56. 1 Haw. 76.

12. If a man be indicted for homicide fe defendendo, and is Flight, found not guilty, yet if it be found that he fled for the fame, he shall forfeit his goods for such flight, in not standing to the law of

the land. 1 H. H. 493.

#### IV. Manslaughter.

1. By manslaughter is to be understood such killing of a man, Manslaughter, as happens either on a sudden quarrel, or in the commission of an what unlawful act, without any deliberate intention of doing any mis-

chief at all. 1 Haw. 76.

2. There is no difference between murder and manslaughter, without malice but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled, till the blow was given. 3 Inst. 55.

3. There can be no accessaries to this offence before the fact, Accessaries

because it must be done without premeditation. I Haw. 76.

But there may be accessaries after the fact. 3 Infl. 55. 4. This offence is not bailable by justices of the peace. 3 Ed. 1. Bail. c. 15.

5. It is within the benefit of clergy; but the offender shall for- Clergy.

feit as in other felonies. 2 H. H. 344.

6. But there is one kind of manslaughter, which by the statute Stabbing. of the t J. c. 8. is excluded the benefit of clergy; viz. He who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first, so as the person so stabbed or thrust shall die thereof in six months, altho' it cannot be proved that the same was done of malice forethought, shall be guilty of selony without benefit of clergy.

#### V. Murder.

t. Murder is, when a man of found memory, and of the age Murder, whate of discretion, unlawfully killeth any person under the king's peace,

B 4

### Domicide.

with malice forethought, either expressed by the party, or implied by law; fo as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 I. A. 47.

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Cales of murder.

2. By malice expressed, is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorized.

thorized. 1 H. H. 451.

And the evidences of such a malice must arise from external circumflances discovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like; which are various, according to variety of circumstances.

1 H. H. 451.

3. Malice implied is in feveral cases: as when one voluntarily kills another, without any provocation; for in this case the law prefumes it to be malicious, and that he is a publick enemy of mankind. 1 H. H. 455, 456.

4. Poisoning also implies malice, because it is an act of delibe-

ration. 1 H. H. 455.

5. Also when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 H. H. 457.

6. Also where a prisoner dieth by duress of the gaoler, the law

implies malice, by reason of the cruelty. 3 Infl. 52.
7. And in general, any formed design of doing mischief may be called malice, and therefore not fuch killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be preversely wicked, is adjudged to be of malice prepense, and consequently murder. 1 Haw. 80. Strange 766. Oneby's case.

8. And wherever it appears that a man killed another, it shall be intended prima facie that he did it maliciously, unless he can make out the contrary, by flewing that he did it on a fudden pro-

vocation, or the like. 1 Haw. 82.

9. Also wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to

have gone fo far. 1 Haw. 83.

10. And it feems to be agreed, that no breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him, in fuch a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of fuch affault, whether the person slain did at all fight in his defence or not. 1 Haw. 82.

11. If a man by harsh and unkind usage put another into such a passion of grief or fear, that the party either die suddenly, or contract some disease whereof he dies, tho' this may be murder or manslaughter in the fight of god, yet in a human judicature it cannot come under the judgment of felony, because no external 25. If any man be slain or murdered, and the slayers, mur-Trial, when, derers, and accessaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they shall not be suffered to go at large, but be committed or bailed, till the year and day be past; and an appeal may be brought, notwithstanding such acquittal on indictment, if he hath not had his clergy. 3 H. 7. c. 1.

indictment, if he hath not had his clergy. 3 H. 7. c. 1.

26. Sentence, in case of murder, shall be pronounced in open Judgment, court immediately after conviction, unless the court shall see reasonable cause for postponing the same; in which shall be expressed not only the usual judgment of death, but also the time appointed for execution, and the marks of infamy directed for such offen-

ders. 25 G. 2. c. 37. f. 3.

27. And after conviction and judgment, the gaoler shall con-How to be define the prisoner to some cell, or other proper and safe place in the meaned after prison, apart from the other prisoners; and no person, except the judgment. gaoler, or his servants, shall have access to him, without a licence from the judge, sheriff, or under sheriff. But if the judge shall see cause to respite the execution, he may during the time of such stay, relax, or release, by licence under his hand, any or all of the restraints or regulations before directed to be observed by the gaoler. 25 G. 2. c. 37. f. 6, 7.

And after sentence, and until execution, the offender shall be fed with bread and water only (except in case of receiving the facrament; or of any violent sickness or wound, in which case some known physician, surgeon, or apothecary may be admitted by the gaoler to administer necessaries, his name and place of abode being sirst entred in the books of such prison.) And if the gaoler shall offend against, or neglect to put in execution, any of the said directions; he shall forfeit his office, and be fined 20 /. and impri-

foned till paid. id. f. 8.

28. The execution of persons found guilty of wilful murder, Execution, shall be on the day next but one after sentence passed, unless it be Sunday, and in that case on the Monday following. 25 G. 2. c. 37. f. 1.

But if there shall appear reasonable cause, the judge after sentence pronounced, may stay the execution at his discretion. id.

f. 1.

29. And if any person shall by force set at liberty or rescue, Rescue, or attempt to set at liberty, or rescue, any person out of prison, committed for, or found guilty of murder; or rescue, or attempt to rescue any such person going to, or during execution; he shall be guilty of selony without benefit of clergy. 25 G. 2. c. 37. f. 9.

30. The body, if in London or Middlefex, shall be immediately Body not to be conveyed by the sheriff, to the surgeons hall, or such other place buried. as the surgeons company shall appoint, to be by them diffected and anatomized; and if elsewhere, shall be delivered to such surgeon as the judge shall direct, for the purpose aforesaid.

And the judge may direct the body to be hung in chains, or anatomized; but in no case whatsoever to be buried, unless after

the same shall have been dissected and anatomized. f. 5.

31. And

### Domicide.

Rescuing the body.

31. And if after execution, any person shall by force rescue, or attempt to rescue the body; he shall be guilty of felony, and transported for seven years. 25 G. 2. c. 37. J. 10.

How far the achis clergy.

Pardon.

Navy.

32. The principal in murder is ousted of clergy in all cases, and ceffary shall have the accessary before is also ousted of clergy in all cases, but the accessary after is in no case ousted of clergy. 2 H. H. 344.

33. All voluntary murders, wilful poisonings, and all slaughters of forethought felony, are excepted out of the general pardon of the 20 G. 2. c. 52.

34. All murders committed by any person in the fleet, shall be punished with death, by the sentence of a court martial. 22 G. 2. c. 33. art. 28.

#### VI. Selfmurder.

Felo de fe.

1. A felo de se, or felon of himself, is a person, who being of found mind, and of the age of discretion, voluntarily killeth him-3 Inft. 54. 1 H. H. 411.

Year and day.

2. If a man give himself a wound, intending to be felo de se, and dieth not within the year and day after the wound, he is not felo de fe. 3 Inft. 54.

Nen compos.

3. Mr. Hawkins speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be non compos of course; because it is faid to be impossible, that a man in his fenses should do a thing fo contrary to nature, and all fense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance that of a mother murdering her child, which is also against nature and reason: and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person non compos mentis can be guilty of no crime. 1 Haw. 67.

And Lord Hale fays, it is not every melancholy or hypochondriacal distemper, that denominates a man non compos, for there are few who commit this offence, but are under fuch infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantick, or destitute of the use of reason, which

will denominate him non compos. 1 H. H. 412.

4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, with-

out an attainder by course of law. 3 Inst. 54.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in fessions may inquire thereof; for they have power by their commission to inquire of all felonies: and a presentment thereof found before them, intitles the king to the forfeiture. 3 Inft. 54, 55. Dalt. c. 144.

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquifition. 3 Inft. 55. Dalt. c. 144. 1 Hale's Pl. 29. 1 Haw. 68.

Forfeiture.

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But Lord Hale, in his history of the pleas of the crown, feemeth to doubt, whether it shall not relate to the time of the death only, and not to the time of the wound given. 1 H. H. 414.

5. Nor doth the offence work any corruption of blood, or loss Corruption of

of dower. 1 Haw. 68.

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6. By the rubrick in the common prayer, before the burial of Burial. fice (confirmed by act of parliament, 13 & 14 C. 2. c. 4.) perfons who have laid violent hands upon themselves, shall not have that office used at their interment.

Dops. See Ercife.

### Horses.

Stealing of horses belongs to title Larceny.

I. Buying of stolen borses.

II. Killing or maining borses in the night.

III. Putting stoned borses on commons.

IV. Putting scabbed borses on commons.

#### I. Buying of Stolen borses.

BY the 2 & 3 P. & M. c. 7. and 31 El. c. 12. It is en-

1. The keeper of every fair and market shall yearly appoint a Horse fair, certain special and open place, where horses shall be sold in any fair or market overt.

2. And shall appoint one or more persons to take toll there, Toll taken,

and to keep the same place from ten in the forenoon till sun set.

3. And the fale or exchange in any fair or market overt, of Horse to be any stolen horse, shall not alter the property, unless the same shall shewed one hours be, in the time of the said fair or market, openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sun set, in the open place of the sair or market, wherein horses are commonly used to be sold, and not within any house, yard, backside, or other privy or secret place.

. 4. Nor unless all the parties to the bargain shall come together, Seller and buyer and bring the horse to the open place appointed for the toll taker, to go to the toll

or for the book keeper where no toll is due.

5. Nor unless such toll taker there, or (where no toll is paid) Sale to be enthe book keeper or chief officer of the fair or market, shall take tred, upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the fame

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same his knowledge in a book to be kept for that purpose; or else that the feller shall bring to the toll taker, or other officer aforesaid, one credible person, that shall testify that he knoweth the seller, and his true name, furname, mistery, and dwelling place, and there enter the same, and also the name, surname, mistery, and dwelling place of him that so avoncheth his knowledge.

6. Nor unless he also cause to be entered, the very true price.

7. And also the colour, and one special mark at least.

8. And also the buyer to pay the toll, if any is due; if not, then to give 1 d. for the entry.

9. Which done, the person entring the same shall give to the buyer requiring and paying 2 d. for the fame, a note in writing of

all the contents of fuch entry subscribed with his hand. to. Every person offending in any of the premisses shall forfeit 51. half to the king, and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the fale shall be void: and the owner may seize and take his horse again, or have an action of detinue or replevin for the same.

11. And if any horse shall be stolen, and after shall be sold in open fair or market, and the fale shall be used in all points as been duly entred. aforesaid, yet nevertheless such sale in six months after the felony done, shall not take away the owner's property, so as claim be made in fix months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so as proof be made before such magistrate in 40 days next ensuing by two witnesses, that the property of fuch horse was in the party claiming, and was stolen from him within fix months next before fuch claim; but the party from whom the same was stolen, may at all times after, notwithstanding fuch fale, take again the faid horse, on payment, or readiness

before such magistrate, that he paid for the same.

#### II. Killing or maining borses in the night.

to offer to the party who hath possession, so much as he shall swear

1. By the 22 & 23 C. 2. c. 7. Where any person shall in the night time maliciously kill or destroy any horses; he shall be guilty of felony, and may be transported, by three justices in sessions, for feven years.

2. And if any person shall in the night time maliciously wound or hurt any horses; he shall forfeit to the party grieved treble damages, on the like conviction.

#### III. Putting stoned borses on commons.

1. No person shall put in any forest, chase, moor, heath, common, or waste (where mares or fillies are used to be kept) any stoned horse above the age of two years, not being 15 hands high, within the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Effex, Kent, South-Hampshire, North-Wiltsbire, Oxford, Berksbire, Worcester, Glocester, Somerset, North Wales, South Wales, Bedford, Warwick, Northampton, Yorkshire, Chefbire,

And the price. And marks. Toll to be paid.

Certificate of entry.

Penalties.

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Cheshire, Staffordshire, Lancashire, Salop, Leicester, Hereford, and Lincoln; nor under 14 hands in any other county (except Cornwall, 21 J. c. 28. s. 12.); on pain of forfeiting the same. 32 H. 8. c. 13. s. 2, 10.

But this shall not extend to the marshes in the counties of Cambridge, Huntington, Suffolk, Northampton, Lincoln, and Norfolk; provided that the horses be of 13 hands. 8 El. c. 8. f. 3.

Also nothing herein shall extend to any stoned horse, that shall happen once in a year to break out of any passure into such common, so that he do not stay there above four days after notice given at the dwelling house of the owner, or after publication thereof on a Sunday or other festival, in the parish church where the owner or possessor of such horse dwelleth. 32 H. 8. c. 13. s.

2. And any person may seize any such horse so being under Seizingthe same fize, in manner sollowing: He shall go to the keeper of such so-rest, or (out of such forest) to the constable of the next town; and require him to go with him, to bring such horse to the next pound; and there to be measured by such officer, in the presence of three other honest men to be appointed by the officer; and if he shall be sound contrary to what is above expressed, such person may take him for his own use. 32 H. 8. c. 13. s.

And if such keeper, or constable, or other of the three persons shall resuse to do as is aforesaid; he shall forseit 40 s. f. 4.

3. And all such commons and other places shall, within 15 days Driving the comafter *Michaelmas* yearly, be driven by the owners and keepers, or mon. constables respectively, on pain of 40 s. and they may also drive the same at any other time when they shall think meet. 32 H. 8. c. 13. f. 6.

And if in any of the faid drifts, there shall be found any mare, filly, fole, or gelding, that shall then be thought not able, nor like to grow to be able to bear soles of reasonable stature, or to do prositable labours, by the discretion of the drivers, or of the more number of them; they may kill and bury them. f. 7.

4. All which said forfeitures shall be half to the king, and half Penalties to him that shall sue: and the justices in sessions, and stewards of leets, may inquire thereof; and the steward shall certify his presentments to the next sessions. 32 H. 8. c. 13. f. 8.

#### IV. Putting scabbed borses on commons.

No person shall have, or put to pasture, any horse, gelding, or Scabbed, mare, insected with scab or mange, in any common or common stelds; on pain of 10s. which offence shall be inquirable in the leet, as other common annoyances be, and the forfeiture shall be to the lord of the leet. 32 H. 8. c. 13. f. 9.

Pousebzeaking. See Burglary and Larceny.

### House of correction.

correction.

Building or re- 1. BY the 7 J. c. 4. It was enacted, that before Michaelmas pairing houses of 1611. there should be built or provided within every county, one or more fit and convenient houses of correction, with convenient backfide thereunto adjoining, together with mills, turns, cards, and such like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto fuch persons as by the justices in sessions should be directed, upon trust, that the same should be employed for the keeping, correcting, and fetting to work the faid rogues, vagabonds, or flurdy beggars, and other idle and disorderly persons. f. 2.

And by the 17 G. 2. c. 5. On presentment of the grand jury, at the affizes, great fession, or general gaol delivery, held for any county or liberty (or at the general fessions, or general quarter seffions of the peace, where there shall be no affizes, great session. or general gaol delivery held, 14 G. 2. c. 33. f. 2.) that there is no house of correction, and that it will be necessary to provide one or more; or that the houses of correction already provided are not fufficient or convenient, or want to be enlarged; the juflices in fessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient backfides or outlets thereto adjoining, or to purchase land, and to erect such house or houses upon part thereof. and to lay out the rest of such land for such backsides or outlets: and to conclude and agree upon raifing fuch fums of money, as on examination of able and sufficient workmen, or others, shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to such persons as the said justices in sessions shall direct, in trust and for the uses and purposes aforesaid.

Appointing the mafter.

His falary.

2. And the justices in fessions shall appoint at their will and pleasure, fit persons to be governors or masters of such houses so

to be provided. 7 J. c. 4. s. 4. 17 G. 2. c. 5. s. 32.

3. And for the faid master or governor's travel and care to be had in the faid fervice, and for the relieving of fuch as shall be weak and fick in his custody, the justices in sessions shall appoint fuch fums yearly as they shall think meet, to be paid quarterly beforehand by the treasurer (the said master or governor giving fufficient fecurity for the continuance and performance of the faid fervice) 7 J. c. 4. f. 6. 17 G. 2. c. 5. f. 33.

Which fums shall be paid out of the general county rate, by the

12 G. 2. c. 29.

Fitting up the houie.

4. And the justices in sessions shall take care, that the houses of correction (except those erected or maintained by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture, for keeping, relieving, employing, and correcting, all idle and disorderly persons, rogues, vagabonds, incorrigible incom conti as th faid perfe orde J. 31 5 any tion, long

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incorrigible rogues, and others, who shall be sent to, confined, or continued in the same; and shall make such orders and regulations as they shall think sit, for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence; which orders shall not be removed by any certiorari. 17 G. 2. c. 5.

5. And whereas doubts may arife, where authority is given to Commitment any justice or justices, to commit offenders to the house of correction, for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expresly limited; it is enacted, that where any offenders shall be committed as aforesaid, by virtue of any law in being or to be made, and the time and manner of their punishment is not expresly limited, the said justice or justices shall commit such offenders to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law: And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him further not exceeding three months. 17 G. 2. c. 5. f. 32.

And where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the house of correction of the county, the justices of such liberty may commit such person to the house of correction for the county. 15 G. 2.

6. The faid master or governor shall have power to set such The master's rogues, vagabonds, idle and disorderly persons, as shall be brought duty. or sent to the said house, to work and labour (being able), for such time as they shall continue therein, and to punish them by putting setters or gives upon them, and by moderate whipping: And the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house of correction, shall in no sort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but shall have such and so much allowance as they shall deserve by their own labour and work. 7 %. c. 4. f. 4.

And if the master shall not, at every quarter sessions, yield a true account of all such persons as have been committed to his custody: or if any person committed to his custody, shall be troublesome to the country, by going abroad; or otherwise shall escape away from the house of correction, before he shall be from thence lawfully delivered; then the said justices shall set down such sines and penalties upon the said master or governor, as they shall think sit; and all sines and penalties shall be paid to the treasurer, and accounted for by him. 7 J. c. 4. s. 9.

And two justices within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall visit the same twice a Vol. II.

### Doufe of correction.

year, or oftner if need be, and report the state thereof to the next fessions. And if the governors thereof shall not set or keep the said idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, to hard labour, and punish and correct them according to the directions of their warrants of commitment, or shall otherwise misbehave themselves, the said justices in sessions shall fine them, as by the 7 J. c. 4. the sines to be paid to the treasurer, and accounted for by him as part of the county stock. 17 G. 2. c. 5. f. 31.

Removing the mafter.

7. The justices in sessions may remove the said governor or master; and if any person removed by order of sessions, shall refuse or neglect to quit possession, for ten days after notice given him in writing by the clerk of the peace, any two justices (on producing to them such order of sessions, or an attested copy thereof, and on oath of one witness of such notice having been given, and of his having resused or neglected to quit possession) may by their warrant direct the sheriff to remove him, who shall thereupon clear the possession as in case of a writ of babere facias possession.

Spirituous liquors not to be drank therein. 8. By the 24 G. 2. c. 40. No spirituous liquors shall be fold or used in any house of correction; as may be seen more at large, under the article relating to spirituous liquors, in the title Excise.

Expences of the whole, e

9. And to defray the expences of erecting, purchasing, hiring, enlarging, altering, and repairing houses of correction, and of purchasing land to erect them upon, and for backsides and outlets, and of fitting up and furnishing such houses, and of sending persons to and from the same, and employing them there, the justices in sessions may cause such sums as shall be necessary, to be raised in the same manner as rates are to be raised by the 12 G. 2. c. 29. 17 G. 2. c. 5. f. 33.

### Hue and cry.

Meaning of the I. words.

1. L ORD Coke faith, that hue and cry (called in ancient records butefium & clamor) do mean the fame thing; for that buer in French is to hoot or shout, in English to cry. 2 Inst.

But fince it appeareth by the old books (of which also Lord Coke maketh observation, 2 Inft. 173.) that hue and cry was anciently both by horn and by voice, it may feem that these two words are not synonymous, but that this butesium or booting is by the born, and crying by the voice; with which also accordeth the French word buchet, which signisses a huntsman's horn: So that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry is said to be practised also in Scothard.

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2. Hue and cry is the old common law process after felons, Hue and cry, and fuch as have dangerously wounded any person: And this hath what. received great countenance and authority by feveral acts of par-2 H. H. 98.

3. To prevent felonies; In walled towns the gates shall be shut Watches to be from fun-fetting to fun-rifing: and none shall lodge without the kept. town, from nine of the clock till day, unless his host will answer for him. In other towns, watches shall be kept: and if a watchman arrest a night walker, and he disobey and fly, the watchman

may make hue and cry. 13 Ed. 1. ft. 2. c. 4.

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4. When any felony is committed, or any person is grievously Application to and dangerously wounded, or any person assaulted and offered to the constable. be robbed, either in the day or night; the party grieved, or any other, may refort to the constable of the vill; and, 1. Give him fuch reasonable assurance thereof, as the nature of the case will bear. 2. If he knows the name of him that did it, he must tell the constable the same. 3. If he know it not, but can describe him, he must describe his person, or his habit, or his horse, or fuch circumstances as he knows, which may conduce to his difcovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the constable with the fact, and defire him to fearch in his town for suspected perions, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may ex post facto be useful for discovering a malefactor, which cannot be at first found. 2 H. H. 100, 101. 3 Inft. 116.

5. For levying hue and cry, altho' it is a good course to have Justice's warthe warrant (A) of a justice of the peace, when time will permit, rant. in order to prevent causeless hue and cry; yet by the frame of the statutes it is by no means necessary, nor is it always convenient; for the felon may escape before the warrant be obtained: and hue and cry was part of the law, before justices of the peace were first

instituted. 2 H. H. 99.

6. And the duty of the constable is, to raise the power of the Constable to town, as well in the night as in the day, for the profecution of raise the town.

the offender. 3 Inft. 116.

7. And upon hue and cry levied against any person, or where And to search. any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may fearch suspected places within his vill, for the apprehending of the felons. 2 H. H.

8. But tho' he may fearch suspected places or houses, yet his Breaking doors entry must be by the doors being open; for he cannot break open to fearch. doors barely to fearch, unless the person against whom the hue and cry is levied be there, and then it is true he may; therefore in case of such a search, the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there: But it must be always remembred, that in

### Due and cry.

case of breaking open a door, there must first a notice given to them within of his business, and a demand of entrance, and a refusal, before the doors can be broken. 2 H. H. 103. 2 Haw. 86.

Notice to the next conftable.

9. If the person, against whom the hue and cry is raised, be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea side. And this was the law before the conquest. 3 Inst. 116.

And to the next.

10. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the selon, his apparel, horse, and the like, and which way he is gone, if it may be. Dalt c. 54.

What shall be done where the person cannot be described.

flaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such a hue and cry is good, as hath been said, and must be pursued, though no person certain be named or described. 2 H. H. 103.

And therefore in this case, all that can be done is, for those that pursue the hue and cry, to take such persons as they have probable cause to suspect; as for instance, such persons as are vagrants, or such suspections as come late into their inn or lodgings, and give no reasonable account where they had been,

and the like. id.

All persons shall follow the hue and cry.

12. By the statute of the 3 Ed. 1. c. 9. All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 Infl. 171.) and at the cry of the country, to sue and arrest felons; on pain of a grievous sine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous sine.

And by the statute of the 13 Ed. 1. st. 2. a. 1. It is likewise enacted, that immediately upon robberies and selonies committed, fresh suit shall be made, from town to town, and from county to

county.

9.60

And no hue and cry shall be lawful, except it be by horsemen and footmen. 27 El. c. 13. f. 10.

And the life of hue and cry is fresh suit. 3 Inft. 117.

Breaking doors to arrest upon pursuit. 13. If the person pursued by hue and cry be in a house, and the doors are shut, and resused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case, where he may arrest, though it be only a suspicion of selony; for it is for the king and commonwealth, and therefore a virtual non omittas is in the case: and the same law, is upon a dangerous wound given, and a hue and cry levied upon the offender. 2 H. H. 102.

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14. And it feems in this case, that if he cannot be otherwise Killing in the taken, he may be killed; and the necessity excuseth the constable. pursuit. 2 H. H. 102.

15. If hue and cry be raifed against a person certain for felony, Arresting an intho' possibly he is innocent; yet the constables, and those that follow the hue and cry, may arrest and imprison him in the common gaol, or carry him to a justice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 H. H. 102.

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16. If the hue and cry be not against a person certain, but by Arresting a perdescription of his stature, person, clothes, horse, and the like; son by descripyet the hue and cry doth justify the constable, or other person following it, in apprehending the person so described, whether innocent or guilty: for that is his warrant; it is a kind of process that the law allows of, not usual in other cases, namely, to arrest a perfon by description. 2 H. H. 103.

17. In case of hue and cry once raised and levied, on supposal Case of arresting of a felony committed, tho' in truth there was no felony committed, upon hue and cry yet those that pursue hue and cry, may arrest and proceed, as if levied without cause. so be a felony had been really committed.

And therefore the justification of an imprisonment by a person upon suspicion, and by a person (especially a constable) upon hue and cry levied, do extremely differ; for in the former case, there must be a felony averred to be done, and it is issuable; but in the latter, to wit, upon hue and cry, it need not be averred, but the hue and cry levied upon information of a felony is fufficient, tho' perchance the information were falfe.

And the reasons hereof are these; 1. Because the constable cannot examine the truth or falshood of the suggestion of him that first levied it, for he cannot administer to him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of the peace, the felon might escape, and the pursuit would be lost and fruitless. 2. Because the constable is by the feveral acts of parliament compellable to pursue hue and cry; and he is punishable, and so are those of the vill, if they do it 3. Because he that first raiseth a hue and cry, where no felony is committed, that is, he who giveth the false information, is severely punishable by fine and imprisonment, if the information be false.

And therefore if he raise hue and cry upon a person that is innocent, yet they that purfue the hue and cry may justify the imprisonment of that innocent person; and the raiser is punishable: and by the same reason, if he give notice of a felony committed, when there was in truth none.

And here the justification of the imprisonment is mixed, partly upon the hue and cry, and partly upon their own suspicion; and therefore, 1. In respect that it is upon hue and cry, there needs no averment, that the felony was done, if the arrest be by that constable that first received the information, and so raised the hue and cry; or if the arrest were made by that constable, or those vills, to whom the hue and cry came at the fecond hand, it must be averred, that fuch a hue and cry came to them, purporting

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fuch a felony to be done. 2. But also inasmuch as the hue and cry neither names nor describes the person of the felon, but only the felony committed, and therefore the arrest of this or that particular person is left to the suspicion and discretion of the constable, or of the people of the second or third vill, he that arrests any person upon such general hue and cry, must aver that he

suspected, and shew a reasonable cause of suspicion.

But now by the statute of 7 J. c. 5. the constable, or any that come to his assistance, even in this case of hue and cry, may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, tho' performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants, within the precincts of their constablewick. 2 H. H. 101,

Persons taken on hue and cry, how far bailable.

High conftables to prefent those who pursue not hue and cry.

Punishment of those who follow not hue and cry.

Power of the leet to inquire thereof.

18. It feems that they who are taken upon fresh hue and cry, are not bailable, as being to be accounted amongst those persons, who are under a violent presumption of guilt. 2 Haw. 98.

19. By the 13 Ed. 1. ft. 2. c. 6. Constables of hundreds shall be chosen, who shall present before justices assigned, defaults of the suits of towns, and all such as lodge strangers in uplandish towns, for whom they will not answer.

20. And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 Infl.

21. And it is an article of the leet, to inquire of hues and cries levied and not pursued. 18 Ed. 2.

A. Warrant to levy hue and cry on a robbery having been committed.

Westmorland. To all constables and other officers, as well in the said county of Westmorland, as elsewhere, to whom the execution hereof doth or shall belong.

HEREAS A. I. of —— in the county of yeoman, hath this day made information upon oath, before me J. P. esquire, one of his majesty's justices of the peace in and for the said county of W. that on this present —— day of —— in the —— year of the reign of —— betwixt the bours of three and sour in the afternoon of the same day, at a place called — in the said county of W. in the king's highway there, two malesactors and selons to him the said A. I. unknown, in and upon him the said A. I. then and there being in the peace of god and of our lord the king, seloniously did make an assault, and him the said A. I. then and there feloniously did put in great fear and danger of his life, and the sum of —— of lawful money of Great Britain, of the goods and chartels of him the said A. I. from the person, and against the will of him the said A. I. then and there wiolently and seloniously did steal, take, and carry away: and that one of the said malesactors and selons, to him the said A. I. unknown, is a tall.

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tall, frong man, and seemeth to be about the age of is pitted in his face with the small pox, and hath the scar of a avound under his left eye, and had then on a dark brown riding coat &c. and did ride upon a bay gelding with a flar on his forehead; and the other &c. And that after the faid felony and robbery committed, they the said malefactors and felons to him the said A. I. unknown, did fly, and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent fearch therein, for the persons above described, and to make fresh pursuit and bue and cry after them from town to town, and from county to county, as well by horsemen as by footmen; and to give due notice hereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit, as otherwise, apprehend or cause to be apprehended, as justly suspected for baving committed the said robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal, at \_\_\_\_\_ in the said county of W. the - day of - aforesaid, in the year aforesaid.

### Hundzed.

1. I N ancient times, before the conquest, it was ordained for Hundred whence the more fure keeping of the peace, that all free born men fo called, should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, so because it was then also appointed, that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general affembly was, and yet is, called an hundred. Lamb. Conft.

2. If any homicide be committed, or dangerous wound given, Hundred to be in the day time, and the offender escape, the town shall be amerced for an amerced; and if out of a town, the hundred shall be amerced. escape.

2 Haw. 74. 3. The hundred shall make good the damages, in the cases of Hundredanswe robbery; cutting banks; cutting hop binds; burning houses, barns, other cases. outhouses, hovels, cocks, mows, or stacks of corn, straw, hay, or wood; mines or pits of coal; destroying granaries, or corn intended for exportation; destroying turnpikes; or works of na-

vigable rivers; and the like: as may be feen under their proper titles.

Damages how to be levied.

4. Writs of execution which shall be sued out against the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, shall by the sheriff on receipt thereof be produced to two justices (1 2. in or near the hundred; who shall cause a taxation to be made and levied by the constables in 30 days, for paying the plaintiff's costs and damages, and also all such necessary expences as any inhabitants shall have been at in defending such action; the same being first proved on oath before the said justices, and the attorney's bill taxed. And the said sums shall be paid to the sheriff by the constables in ten days after the time is expired for collecting; and by the sheriff, to the persons intitled to receive the same, without any deduction or see: all in the same manner, as is directed by the statute of the 8 G. 2. c. 16. in cases of robbery. 22 G. 2. c. 46. f. 34.

hunting. See Game. pusband. See Wife.

curboutes to reverse excite stours as faces of come flights may. We wrote the love or with or could be tology to matrice, as the

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Ideots. See Lunaticks. Implisonment. See Arrest, Commitment. Incest. See Lewoness. Inclosures pulling down. See Mood.

### Indiament.

I. Indictment, what.

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II. What offences are indictable.

III. Within what time an indistment shall be brought.

IV. How far several offenders or several offences may be joined in one indistment.

V. Whether the grand jury may examine witnesses against the king.

VI. How many witnesses are requisite to an indictment.

VII. Whether a grand jury may find an indistment specially.

VIII. Indictment to be in English.

IX. Form of an indictment.

X. Charges of an indictment.

#### I. Indictment, what.

INDICTMENT cometh of the French word enditer, and fignifieth in law, an accusation found by an inquest of twelve or more upon their oath. And as the appeal is ever the suit of the party, so the indictment is always the suit of the king, and as it were his declaration; and the party who prosecutes it, is a good witness to prove it. And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a presentment; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an inquisition. 1 Inst. 126. 2 Haw. 209.

#### II. What offences are indictable.

There can be no doubt, but that all capital crimes whatfoever, and also all kinds of inferior crimes of a publick nature, as misprisons, contempts, disturbances of the peace, oppressions, and

all other misdemeanors whatsoever of a publick evil example against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the king. 2 Haw.

Also it seems to be a good general ground, that wherever a statute prohibits a matter of a publick grievance to the liberties and security of a subject; or commands a matter of publick convenience, as the repairing of the common streets of a town; an offender against such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is said that he may in every action for doing a thing prohibited by statute); it seems questionable, whether he may afterwards be indicted, because that would make him liable to a second fine for the same offence. 2 Haw. 210.

But if a statute extend only to private persons, or if it extend to all persons in general, but chiefly concern disputes of a private nature, as those relating to distresses made by lords on their tenants; it is said that offences against such statute will hardly bear an indictment. 2 Haw. 211.

Also where a statute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day, that it will not maintain an indictment. 2 Haw. 211. Str. 679.

But Lord Hale distinguishes upon this, and says, that if a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the probibitory clause, and thereupon fined, but not to recover the penalty; but then it seems the fine ought not to exceed the penalty: but if the act be not prohibitory, but only that if any person shall do such a thing, he shall forseit so much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding must be by action, bill, plaint, or information. 2 H. H. 171.

Also, where a statute adds a farther penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be still indicted, if the prosecutor thinks sit, at the common law. And if the indictment for such offence conclude against the form of the statute, and cannot be made good as an indictment upon the statute, it seems to be now settled, that it may be maintained as an indictment at common law. 2 Harv. 211.

A fact amounting to a felony, is not indictable as a trespass.

L. Raym. 712.

#### III. Within what time an indictment shall be brought.

By the 31 El. c. 5. All indictments upon any statute penal, whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed: if the forfeiture is limited

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to the king and profecutor, the suit shall be in one year; and in default thereof, the same shall be sued for the king, within two years after that year ended. But where a statute limits a shorter time, the suit shall be brought within such time simited.

But for indictments of felonies, and other misdemeanors where there is no forfeiture to the king, or to the king and prosecutor, no time is limited by any statute; but the several acts of general pardon have the effect of a like limitation. The last act of which kind was that of the 20 G. 2. c. 52. for certain offences committed before June 15, 1747.

## IV. How far several offenders or several offences may be joined in one indistment.

1. If there be one offender, and feweral offences committed by him, as burglary and larceny, they may be contained in one indictment. 2 H. H. 173.

But in the case of K. and Clendon, T. 4 G. 2. There was an indictment setting forth, that the desendant made an assault upon Sarah Beatniff and Elizabeth Cooper, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arrest of judgment, that these were two distinct offences, and therefore could not be laid in the same indictment; and of that opinion was the court, and the judgment was arrested. Str. 870.

2. If there be feveral offenders that commit the fame offence, though in law they are several offences in relation to the several offenders, yet they may be joined in one indictment; as if several commit a robbery, or burglary, or murder. 2 H. H. 173.

3. And so it is, though the offences are of feweral degrees, but dependant one upon another, as the principal in the first degree, and the principal in the second degree, to wit, present, aiding and abetting the principal, and accessary before or after. 2 H. H.

4. Also several persons may be indicted in the same indictment for several offences of the same nature, as for keeping disorderly houses; but the indictment ought to set forth that they severally did so. 2 H. H. 173.

And this is only to be understood where the offences may be joint, as in extortion, maintenance, receiving stolen goods, and the like; and not where the offence is a separate act in each, as in the case of K. against Philips and others, M. 5 G. z. Six were indicted in one indictment for perjury, and sour of them pleading, were convicted. It was moved in arrest of judgment, that the crime of perjury is in its nature several, and two cannot be indicted together. And by the court, There may be great inconveniences if this is allowed; one may be desirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence against one: And they cited a case, T. 6 An. Q. against Hodg son and others, where two were indicted for being scolds, and compared to barratry, and it was held not to lie. And in the principal case judgment was arrested. Str. 921.

In like manner, E. 11 G. K. against Wessen and others. There was an indictment against fix jointly and severally for exercising a trade; and quashed, because there ought to be distinct indictments. Str. 623.

5. Larcenies committed of several things, though at several times, and from several persons, may be joined in one indictment.

H. H. 173.

# V. Whether the grand jury may examine witnesses against the king.

Lord Hale says, that the grand jury at the assizes or sessions ought only to hear the evidence for the king, and in case there be probable evidence, they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards. 2 H. H. 157.

Which doctrine is also laid down by chief justice Pemberton in .

the case of the earl of Shaftesbury, St. Tr. V. 3. p. 415.

But the learned Editor of Hale's History observes upon this, that Sir John Hamiles in his remarks on the said case, St. Tr. V. 4. p. 183. unanswerably shews, that a grand jury ought to have the same persuasion of the truth of the indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth, and nothing but the truth.

And Lord Coke fays, that feeing indictments are the foundation of all, and are commonly found in the absence of the party accufed, it is necessary there should be substantial proof. 3 Inst. 25.

#### VI. How many witnesses are requisite to an indistment.

An indictment may be found upon the oath of one witness only, unless it be for high treason, which requires two witnesses. 2 Haw 256.

## VII. Whether the grand jury may find an indictment specially.

It feems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part false; but must either find a true bill or ignoramus for the whole; and that if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 Haw. 210.

#### VIII. Indictment to be in English.

All indictments, informations, inquisitions and presentments, shall be in *English*, and be written in a common legible hand, and not court hand; on pain of 501. to him that shall sue in three months. 4 G. 2. c. 26. 6 G. 2. c. 14.

IX. Form

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#### IX. Form of an indistment.

In order to understand this matter rightly, it is judged requisite first to insert the intire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

The instance which is chosen is on the statute of stabbing,

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The caption of the indictment is no part of the indictment itself, but is the style or preamble, or return that is made from an inferior court to a superior, from whence a certiorari issues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it stands upon the file in the court where it is taken, is only thus, The jurors for our lord the king upon their oath present; when this comes to be returned upon a certiorari, it is more full and explicit, as follows: 2 H. 11. 166.

Westmorland. A T the general quarter sessions of the peace bolden at Appleby in and for the county aforesaid, the seventh Day of April in the twenty-sixth Year of the reign of our sovereign lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, Before J. P. and K. P. esquires, and others their associates, suffices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to bear and determine divers selonies, trespasses, and other misdemeanors in the said county committed, by the oath of good and lawful men of the county aforesaid, sworn and charged to inquire for our said lord the king, and for the body of

the county aforefaid, it is presented;

That John Armstrong late of Appleby in the county aforesaid, yeoman, not having god before his eyes, but being moved and feduced by the instigation of the devil, on the thirtieth day of March in the twenty-fixth year of the reign of our faid sovereign lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at the hour of nine in the afternoon of the same day, with force and arms, at Appleby aforesaid in the county aforefaid, in and upon one George Harrison in the peace of god and of our said lord the king then and there being (the aforesaid George Harrison not having any weaton then drawn, nor the aforesaid George Harrison bawing first stricken the said John Armstrong) feloniously did make an assault; and that the aforesaid John Armstrong, with a certain drawn sword, of the value of sive shillings, which he the said John Armstrong in his right hand then and there bad and held, the said George Harrison in and upon the right side of the belly near the short ribs of him the said George Harrison (the aforesaid George Harrison as is aforesaid then and there not having any weapon drawn, nor the aforesaid George Harrison then and there baving first stricken the said John Armstrong) then and there feloniously did stab and thrust, giving unto the said George Harrison then and there with the sword aforesaid, in form aforesaid, in and upon the right side of the belly near the short ribs of him the said George Harrison, one mortal wound of the breadth of one inch,

and of the depth of nine inches; of which said mortal wound, he the said George Harrison then and there instantly died: And so the jurors aforesaid upon their oath aforesaid do say, that the said John Armstrong him the said George Harrison on the aforesaid thirtieth day of March in the year aforesaid, at Appleby aforesaid in the county aforesaid, in manner and form aforesaid, feloniously did kill; against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in such case made and provided.

Westmorland The name of the county must be in the margin, or repeated in the body of the caption. 2 H. H. 166.

At the general quarter sessions of the peace The court where the indictment is made, must be expressed; otherwise the caption is erroneous. 1 H. H. 166. 2 Haw. 252.

Holden at Appleby in and for the county aforesaid ] It must appear where the sessions was held; and that the place, where it was held, is within the extent of the commission. 2 H. H. 166.

The seventh day of April in the twenty fixth year of the reign of our sovereign lord George the second lt hath been adjudged, that if the caption of the indictment describe the sessions holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient. But it seems to be agreed, that it is sufficient to express the year of the king, without adding that of our Lord. 2 Have. 255.

The feventh day] Figures to express numbers are not allowable in an indictment; but numbers must be expressed in words. 2 H. H. 170. Cr. Cir. 109. Andr. 137. H. 11 G. 2. K. and Haddock. Or at least in Roman numerals. Str. 261. H. 6 G. K. and Philips.

Before J. P. and K. P. esquires, and others their associates] It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words and others their associates. 2 H. H. 166.

And altho' no sessions can be held without one of the justices being of the quorum, yet in the caption there need not be any mention which of them, or whether any of them, are of the quorum, for it is sufficient if de facto the sessions be held before him or them that are of the quorum, altho' not so mentioned, and so is the usual course. 2 H. H. 167.

And also to hear and determine &c.] These words are necessary, because without this clause (by the commission) they cannot proceed by indictment. 2 H. H. 166. Str. 442.

By the oath] If the caption concludes that it is presented, without saying on their oath, it shall be quashed; for their presentment must be upon oath, and so returned. 2 H. H. 168.

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By the eath of -----] It must name the jurors that prefented the offence; and therefore by the eath of A. B. C. D. and others, is not good; for it may be the presentment was by a less number than 12, or that some one of them was incapacitated who might influence all the rest, as for instance a person outlawed; in which case the indictment may be quashed by plea. 2 H. H. 167.

Good and lawful men of the county aforefaid These words also, Lord Hale saith, are necessary. 2 H. H. 167. But Mr. Hawkins says, they have been often overruled; because all men shall be intended to be honest and lawful, till the contrary appear. 2 Haw. 215.

Sworn and charged to inquire for our faid lord the king, and for the body of the county aforefaid] These words also seem requisite to be inserted. 2 H. H. 167. But yet do not seem to be absolutely necessary. L. Raym. 710.

It is presented; that John Armstrong, late of Appleby in the county aforesaid, yeoman] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 H. H. 175.

But the inhabitants of a parish, may be indicted for not repairing the highway, although no person is particularly named. Wood 1067.

It is faid that no person indicted can take any advantage of a mistaken surname in the indictment, notwithstanding such surname hath no manner of affinity with his true one, and he was never known by it. 2 Haw. 230, 1, 2, 3. 2 H. H. 176.

But the mistake of the christian name is pleadable, and the party shall be dismissed from that indicament. 2 H. H. 176.

But the fafest way is to allow his plea of missioner, both as to his surname and as to his christian name, for he that pleads missioner of either, must in the same plea set forth what his true name is, and then he concludes himself, and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 H. H. 176.

Also an indictment naming the defendant by two christian names

is not good. L. Raym. 562.

If the county is in the margin, and the indictment fets forth the fact to be done at such a place in the county aforesaid, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at such a place in the county aforesaid, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. Crown Cir. 115, 116.

By the 1 H. 5. c. 5. In all indictments on which process of outlawry lieth, to the names of the defendants additions shall be made of their estate, or degree, or mistery, and of the towns,

or hamlets, or places, and counties where they were or be con-

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he shall never alledge the misnomer or want of addition to stop his trial or judgment; for by such his appearance, and pleading to issue, the indictment is affirmed, and the misnomer or want of addition salved. 2 H. H. 176.

And if feveral persons be indicted for one offence, misnomer or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer; for they are in law as feveral indictments. 2 H. H. 177.

And it is the common practice, where an indictment is infufficient, while the grand jury is before the court, to amend it by their confent, in a matter of form, as the name or addition of the party, or the like. 2 Haw. 245.

Not baving god before his eyes, but being moved and seduced by the infligation of the devil ] I do not find it afferted by any authority, that these words are necessary in an indictment:

On the thirtieth day of March in the twenty fixth year of the reign &c.] No indictment can be good, without precisely shewing a certain day of the material facts alledged in it. 2 Haw. 235.

And if the offence be done in the night, before midnight, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must fay, it was done that day after. Lamb. 492.

And altho' the day be inferted, yet if the year is not likewife inserted, the indictment is insufficient. 2 H. H. 177.

But where an indictment charges a man with a bare omission, as the not scouring such a ditch, it is faid, that it needs not shew any 2 Haw. 236.

It is most regular to set forth the year, by shewing the year of the king; yet this may be dispensed with for special reasons, if the very year be otherwise sufficiently expressed. 2 Haw. 236.

And if it say, on such a day last past, without shewing in what year, that is good enough; for the certainty may be found out by the style of the fessions. Lamb. 491.

But tho' the day or year be mistaken in the indictment, yet if the offence were committed in the same county, tho' at another time, the offender ought to be found guilty; but then it may be requisite, if any escheat or forfeiture of land be conceived in the case, for the petit jury to find the true time of the offence committed; and therefore it is best in the indictments to set down the times as truly as can be, tho' it be not of absolute necessity to the defendant's conviction. 2 H. H. 179.

And this the rather, because the jury are to find the indictment

upon their oaths. Dalt. c. 184.

Upon which ground, namely, because the jury are sworn to find the whole truth, and nothing but the truth, it is best to lay

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all the facts in the indictment as near to the truth as may be; and not to fay, in an indictment for a small assault (for instance), wherein the person assaulted received little or no bodily hurt, that such a one with swords, slaves, and pistols, beat, bruised, and wounded him, so that his life was greatly despaired of; nor to say in an indictment for an highway being obstructed, that the king's subjects cannot go thereon, without manifest danger of their lives; and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath, to find the fact as so laid.

At the hour of nine in the afternoon of the same day It is not necessary to mention the hour, in an indistment. 2 Haw. 235.

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With force and arms] By the 37 H. 8. c. 8. it is enacted, that whereas it had been commonly used in indictments, to put in the same the words vi & armis, and in divers of the same indictments to declare the manner of the force and arms, viz. baculis, cultellis, arcubus, & sagittis, or such like, where in truth the parties had no manner of such weapons at the time of the offence committed; therefore for the suture, these words, or such like, shall not of necessity be put in any inquisition or indictment.

But yet where such words are proper and pertinent, it is safe and advisable to insert them, if it be to no other purpose than to aggravate the offence. 2 Haw. 242.

At Appleby aforesaid, in the county aforesaid] No indictment can be good, without expressly shewing some place wherein the offence was committed, which must appear to have been within the jurisdiction of the court. 2 Haw. 236.

But a miltake of the place will not be material upon the exidence, on not guilty pleaded, if the fact be proved at some other

place in the same county. 2 Haw. 237.

And it is not sufficient that the county be expressed in the margent, but the vill where the offence was committed must be alledged to be in the county named in the margent, or, in the county aforesaid, which seems to be sufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 Haw.

220. 2 H. H. 180.

In and upon one George Harrison] Wherever the person injured is known to the jurors, his name ought to be put in the indictment. 2 Haw. 232.

But if they know not his name, an indictment for the murder of a person unknown, or for stealing the goods of a person unknown, is good. 2 H. H. 181.

Also there is no need of an addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it effential to the indictment, tho sometimes it may be convenient for distinction sake to add it. 2 H. H. 182.

resistate the indifferent apon pridence.

In the peace of god, and of our faid lord the king, then and there being It is usual to alledge this, but not necessary, and possibly not true, for he might be breaking the peace at the time. 2 H. H. 186.

The aforesaid George Harrison not having any weapon then drawn, nor the aforesaid George Harrison having first stricken the said John Armstrong] An indictment grounded upon an offence made by act of parliament, must by express words bring the offence within the substantial description made in the act of parliament; and those circumstances mentioned in the statute to make up the offence, shall not be supplied by the general conclusion against the form of the statute. 2 H. H. 170.

And so it is, if an act of parliament oust clergy in certain cases, as murder of malice forethought, robbery in or near the highway, tho' the offences themselves were at common law, yet because at common law within clergy, they shall not be ousted of clergy, though convicted, unless these circumstances, as of malice forethought, or near the highway, be expressed in the indictment.

2 H. H. 170.

But there is no necessity in an indictment on a publick statute, to recite such statute; for the judges are bound ex officio to take no-

tice of all publick statutes. 2 Haw. 245.

Yet if the profecutor take upon him to recite it, and materially vary from a substantial part of the purview of the statute, and conclude against the form of the statute aforesaid, he vitiates the indictment. 2 Hazv. 246.

Also it seems to be generally agreed, that a misrecital of the place or day at which the parliament was holden, vitiates an in-

dictment. 2 Haw. 246.

And it hath been adjudged, that a mifrecital of the title of a

statute is fatal. 2 Haw. 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the provises of the statute; altho' the same may be necessary in a conviction: for since no plea can be admitted to a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty. Have, 250. 2.H. H. 170, 1.

Feloniously did make an assault.] There are several words of art which the law hath appropriated for the description of the offence, which no circumsocution will supply; as feloniously, in the indictionent of any selony; harglariously, in an indictment of burglary; and the like. 2 H. H. 184.

And if a man be indicted that he stole, and it is not said felomiously, this indictment imports but a trespass. 2 H. H. 172.

With a certain drawn [word] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning, or strangling, it doth not maintain the indictment upon evidence. 2 H. H. 185.

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Of the value of five shillings] Regularly it ought to set forth the price of the sword or weapon, or else say of no value; for the weapon is a deodand forfeited to the king, and the township shall be charged for the value, if delivered to them; but this seems not to be essential to the indictment. 2 H. H. 185.

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Which he the faid John Armstrong in his right hand then and there had and held ] It must shew in what hand he held his sword. 2 H. H. 185.

In and upon the right fide of the belly near the short ribs of him the said George Harrison] There must be a certainty of the offence committed, and nothing material shall be taken by intendment or implication; but the special manner of the whole saft ought to be set forth with certainty. 2 Haw. 225, 227.

And therefore in the case of murder, it ought to shew in what part of the body the person was wounded? and therefore if it be on his arm, or hand, or side, without saying whether right or left, it is not good. 2 H. H. 185.

If theft be alledged in any thing, the indictment must set forth the value of the thing stolen; that it may appear, whether it be grand or petit larceny. 2 H. H. 183.

In like manner, an indictment that the defendant took and carried away such a person's goods and chattels, without shewing what in certain, as one horse, one cow, is not good. 2 H. H.

An indictment that the defendant is a common highwayman, a common defamer, a common disturber of the peace, and the like, is not good; because it is too general, and contains not the particular matter wherein the offence was committed. 2 H. H. 182.

In like manner an indictment for divers scandalous, threatning, and contemptuous words, spoken of a justice of the peace, is not good, but ought to set forth the words in special. Str. 699.

An indictment for disobeying an order of justices, must find pofitively, that such an order was made, and not by way of recital, that whereas \_\_\_\_\_\_ L. Raym. 1363.

But in an indicament on a conviction, it is not necessary to set forth the conviction at large, but only shortly, that such a one was before such and such justices convicted, according to the form of the statute, and thereupon a warrant was issued &c. L. Raym. 1196.

Then and there feloniously did stab and thrust In an indictment it is best, and often necessary, to repeat the time and place, to the several parts of the fact. 2 H. H. 178.

Thus in an indictment of murder or manslaughter, as well the day and place of the stroke, or other act done, as of the death, must be expressed; the former, because the escheat or forfeiture of lands relates thereto; the latter, because it must appear, that the death was within the year and day after the stroke. 2 H. H. 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to

be shewed; but this is not necessary in all cases, as ramely, where a limb is cut off; so it may be also a dry blow. 2 H. H. 186.

But tho' the manner and place of the hurt and its nature be requisite, as to the formality of the indicament, and it is sit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is sufficient to maintain the indicament. 2 H. H. 186.

Against the peace of our said lord the now king An indictment without concluding against the peace, is insufficient, tho' it be but for using a trade not having been an apprentice; for every offence against a statute is against the peace, and ought so to be laid. 2 H. H. 188.

Also an indictment that concludes against the peace, and saith not of our lord the king, is insufficient. 2 H. H. 188.

His crown and dignity] An indictment need not conclude against sis crown and dignity, though it be usual in many indictments.

And against the form of the statute in such case made and prowided Regularly, if a statute only make an offence, or alter an offence from one crime to another, as making a bare misdemeanor to become a felony, the indistment for such new made offence, or new made felony, must conclude against the form of the statute, or otherwise it is insufficient. 2 H. H. 192.

But if a man be indicted for an offence, which was at common law, and concludes against the form of the statute, but in truth it is not brought by the indictment within the statute, it shall be quashed, and the party shall not be put to answer it as an offence at common law. 2 H. H. 171.

And if an offence were felony at common law, but a special act of parliament oufts the offender of some benefit that the common law allowed him, when certain circumstances are in the fact; tho' the body of fuch indictment must express those circumstances, according as they are prescribed in the statute, yet the indictment need not conclude against the form of the statute: Thus on the statute of the 8 El. c. 4. in case of pick-pockets, the body of the indictment must bring them within the express purview of the statute, or otherwise they shall have the benefit of clergy; but it need not conclude against the form of the statute, neither is it usual in such cases, for it was felony before, and the flatute doth not give a new punishment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it should conclude in such case against the form of the statute, it would not vitiate the indictment, but would be only surplusage. 2 H. H. 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another statute, the indictment concluding against the form of the statute, is good. 2 H. H. 173.

If the former statute be discontinued, and revived by another statute, the best way is to conclude against the form of the sta-

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tutes; tho' there is good opinion, that it is good enough to conclude against the form of the first statute. 2 H. H. 173.

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ther flaites; If one statute be relative to another, as where the former makes the offence, the latter adds a penalty; the indictment ought to conclude against the form of the statutes. 2 H. H. 173.

#### X. Charges of an indistment.

By the 10 & 11 W. c. 23. No clerk of affize, clerk of the peace, or other person, shall take any see of any person bound over to give evidence against a traytor or selon, for the discharge of his recognizance; nor shall take more than 25. for drawing any bill of indistment against any such selon: on pain of 51. to the party grieved, with sull costs. And if he draw a bill desective, he shall draw a new one gratis, on the like pain.

For the drawing of indictments for other misdemeanors, no being treason or selony, no see is limited by any statute; and therefore the same dependent upon the custom and ancient usage.

Condition of a recognizance to prefer a bill of indictment.

Condition of a recognizance to answer to an indictment.

HE condition of this recognizance is such, That if the abovebound A.O. shall personally appear at the next general quarter sessions of the peace to be bolden at — in and for the said county, then and there to answer to an indictment to be preferred against him by A. I. of — yeoman, for assaulting and beating him the said A. I. and not depart without leave of the court, Then this recognizance to be woid.

# Infants.

Infant, who.

1. T) Y an infant, or minor, is meant any one who is under the

age of 21 years. 1 Inft. 2.

Committing a crime under 14.

2. Those who are under a natural disability of distinguishing between good and evil, as infants under the age of 14 years, which is called the age of discretion, are not punishable by any criminal profecution whatfoever. But this must be understood with some allowance; for if it appear by the circumstances, that an infant under the age of discretion, could distinguish between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit as much as if he were of full e: but in fuch case, the judges will in prudence respite the exeage: but in fuch case, the judges will in proceed that if an infant cution, in order to get a pardon; and it is faid, that if an infant apparently wanting discretion, be indicted and found guilty of felony, the justices themselves may dismiss him, without a pardon. And in general it must be left to the discretion of the judge, upon the circumstances of the case, how far an infant, under that age, is capax doli, or hath knowledge to discern betwixt good and evil. Hale's Pl. 43. 1 Haw. 2. 1 H. H. 18.

Under feven.

3. But within seven years of age, there can be no guilt whatsoever of any capital offence: the infant may be chaftized by his parents or tutors, but cannot be capitally punished, because he cannot be guilty; and if he be indicted for such an offence as is in its nature capital, he must be acquitted. 1 H. H. 19, 20.

Committing a rape.

4. An infant under 14, is presumed by law unable to commit a rape, and therefore it feems cannot be guilty of it; and tho' in other felonies malitia supplet ætatem in some cases, yet it seems as to this fact the law prefumes him impotent, as well as wanting 1 H. H. 630. discretion.

Forcible entry.

5. An infant may be guilty of forcible entry, in respect of perfonal actual violence. I Haw. 147. And the justices may fine him therefore: But yet it shall be good discretion in the justices of the peace, to forbear the imprisonment of such infant. Dalt. s. 126.

Because it is said, that he shall not be subject to corporal punishment, by force of the general words of any statute, wherein

he is not expresly named. I Haw. 147.

Shall be liable to país.

6. But if one, who wants discretion, commit a trespass, against damages for tref- the person or possession of another, he shall nevertheless be compelled in a civil action to give fatisfaction for the damage. 1 Haw. 2. 1 H. H. 15, 16.

May bring an appeal.

7. An infant may bring an appeal, altho' it take from the defendant the benefit of waging battle; but he must profecute such appeal by a guardian. 2 Haw. 161, 162.

An appeal likewise may be brought against him. 2 Haw. 168.

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8. An infant under the age of discretion cannot be an ap- Cannot be an prover; because he cannot take the oath requisite in that case. approver.

2 Haw. 205.

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9. In case of rape, committed upon a child of 12 years old, How far he may fuch child may be fworn as evidence; yea, if she be under that be a witness. age, if it appear to the court that she knows and considers the obligation of an oath, she may be sworn. And in case of evidence against witches, an infant of nine years old was sworn. 1 H. H. 634. Dalt. 378.

10. An infant before 21 years of age, shall not be sworn in an Whether he may

7 W. c. 32. f. 4. 1 Inft. 172.

11. A woman at nine years of age may have dower; at 12 Woman's age of may consent to marriage; and at 14 is of age of discretion, and dower, marriage, may chuse a guardian. 1 Inst. 78.

12. A man is of age at 12 years to take the oath of allegiance Man's age of alin the torn or leet; and at 14 is of age of discretion, may con-legiance, mar-

fent to marriage, and chuse his guardian. 1 Inft. 78.

13. At 21, and not before, persons may bind themselves by fing guardian. any deed, and aliene lands, goods, and chattels. 1 Inft. 171. deed.

14. Upon which ground, infants may not enter into recogni- Nor enter into zance to keep the peace, or to be of the good behaviour, but recognizance.

their fureties only.

15. But an infant may bind himself to pay for his necessary May contract for meat, drink, apparel, physick, and such like; and also for his necessaries. good teaching or instruction, whereby he may profit himself afterwards: but if he binds himself in an obligation, or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. 1 Inft. 172.

And in Earle's case, I Salk. 387. it is said, that an infant may buy necessaries, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who must lay it out for him, or see

it laid out.

16. Also other things of necessity shall bind him, as a presen- May present to tation to a benefice; for otherwise the lapse shall incur against him. a benefice. I Inft. 172.

17. And infants feifed of estates in trust, or by way of mort- May convey in a gage, may make conveyances thereof, as the courts of chancery court of equity.

or exchequer shall direct. 7 An. c. 19.

18. Also, an infant hath, without consent of any other, capa- May purchase. city to purchase, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alledged, waive, or disagree to the purchase: and so may his heirs after him, if he agree not thereunto after his full 1 Inft. 2.

19. The common law feems not to have determined precifely, May make a at what age one may make a testament of a personal estate: it is will. generally allowed, that it may be made at the age of 18, and some say under, for the common law will not prohibit the spiri-

tual court in such cases. 1 Inft. 89. 1 H. H. 17.

# Information.

May be an executor.

20. A person is of age to be an executor at 17; and an administration of any one during the minority of an infant, ceaseth when the infant comes to that age. 5 Co. Pigot's case.

May bequeath children.

21. Any person having child or children, under 21 years of the tuition of his age, and not married, may by deed or will attested by two witnesses, dispose of the custody and tuition of such child or children, until they shall be of the age of 21, or for a lesser time; and this, whether fuch parent be within or above the age of, 21. 12 C. z. c. 24. f. 8.

May fue by prochein amy.

22. An infant cannot answer but by guardian; but he may sue either by his next friend or by guardian. 3 Salk. 196.

In what case he may release a

23. If an infant of the age of 17 years release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action. 1 Inft. 264.

At what age he may be bound apprentice.

24. By the 5 El. c. 4. Persons above the age of 10 years, by their own confent and agreement, may be bound apprentices.

And by the 5 El. c. 5. Any person, above seven years old, may

be bound apprentice to the fea fervice.

By the 43 El. c. 2. No age is limited for the binding of parish apprentices; fo that it feemeth they may be bound at the age of feven, when they cease to be nurse children, and consequently may be taken from the mother.

Infant apprentice embezilling goods.

25. It shall be felony without benefit of clergy, to steal goods to the value of 40 s. out of an house, tho' the house be not broken open: but this shall no textend to apprentices under 15 years of 12 An. ft. 1. c. 7.

Infant fervant embezilling goods.

26. Servants above the age of 18, embezilling their master's goods to the value of 40 s. shall be punished as felons. 21 H. 8.

# Information.

Information at the fuit of the king.
At the fuit of the party.

Nformations are of two kinds; 1. Such as are merely at the fuit of the king: And, 2. Such as are partly the fuit of the king, and partly the fuit of the party; which are commonly called informations qui tam, from those words in the information when the proceedings were in Latin, qui tam pro domino rege quam pro Seipso &c. 2 Haw. 259.

Private action upon a statute.

2. Of near affinity to an information qui tam, is an action upon a statute: which is either a private action, which is, when an action is given upon a statute to the king, and to the party grieved only; or, a popular action, which is, where the action is given to the king, or to any one that will fue for the king and himfelf. Wood 936, 7.

Action popular.

malty.

3. But if the king commenceth his fuit before the informer, In what case the king may have the king shall have the whole forfeiture (because in such case he the whole pe- also is the informer); and he may, before the informer begins his

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fuit, release the penalty to the offender, and bar all others; but if, after a popular action is brought by the informer, the king's attorney will enter ulterius non wult prosequi, the informer may profecute for his part. Wood 937.

4. Where a matter concerns the publick government, and no In what cases an particular person is intitled to an action, there an information will information will

lie. 18 El. c. 5. f. 1. 1 Salk. 374.

5. An information lies, at the common law, for a great variety Id. of crimes less than capital, as batteries, cheats, perjuries, riots, extortions, nufances, contempts, and fuch like; and also it lies in very many cases by statute, wherein the offender is liable to a fine Finch 340. 2 Haw. 260. or other penalty.

6. And in general, it feems that of common right an informa- Id. tion at the fuit of the king, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by fuch statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly ex-

cluded. 2 Haw. 260.

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7. But an information or action qui tam will not lie on any sta- Id. tute, which prohibits a thing as being an immediate offence against the publick good in general, under a certain penalty, unless the whole or part of fuch penalty be expresly given to him who will fue for it; because otherwise it goes to the king, and nothing can be demanded by the party: But where such statute gives any part of fuch penalty to him who will fue for it by action or information, any one may bring fuch action or information, and lay his demand as well for our lord the king, as for himself. 2 Haw. 265,

8. Also where a statute prohibits or commands a thing, the do- Id. ing or omission whereof is an immediate danger to the party, and also highly concerns the peace, safety, or good government of the publick, or the honour of the king, or of his supreme courts of justice, it seems to be the general opinion, that the party grieved

may bring his action qui tam on such statute. 9. By the 31 El. c. 5. All actions, fuits, bills, indictments, or In what time it informations on any penal statute, whereby the forfeiture is limited shall be brought. to the king, shall be brought within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by flatute to be brought within shorter time, then they shall be brought within such time limited. 1.5, 6.

2 Haw. 265.

On any penal statute But if an offence prohibited by a penal flatute, be also an offence at common law; the profecution of it, as of an offence at common law, is no way restrained hereby. 2 Haw. 272.

To any other who shall prosecute That is, to a common informer; and therefore the party grieved is not within the restraint of this statute, but may sue in the same manner as before. 2 Haw.

10. If two informations be exhibited on the same day, for the Two informasame offence, they mutually abate one another. 2 Haw. 275. tions on the 11. By fame day,

## Information.

In what county

11. By the 21 J. c. 4. All offences against any penal statute, for it shall be laid. which any common informer may ground a popular action, bill, plaint, fuit, or information, before the judges of affixe, or justices of the peace in their general or quarter sessions (baving power to hear and determine the same), shall be prosecuted in the county where they were committed, and not elsewhere: and if the offence is not proved to have been committed in the same county, the defendant shall be found not guilty. f. 1, 2.

Provided, that informations, fuits, or actions, against popish reculants, or persons charged with maintenance, champerty, or buying

of titles, may be laid in any county. f. 5.

Against any penal statute ] H. 8 W. K. and Gaul. Holt Ch. J. faid, ten judges had agreed, that this statute doth not extend to any offence created fince; fo that profecutions on subsequent penal statutes are not restrained thereby; but this statute is as to them, as it were, repealed pro tanto. 1 Salk. 372.

For which any common informer may ground a popular action] Therefore this extends not to any fuit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 Haw. 269, 270.

General or quarter sessions, having power to hear and determine the same] Yet this gives no jurisdiction to justices of peace, which they had not before; but only appoints, that where informations might have been brought in the courts at Westminster or before justices of the peace, such informations shall be now brought before justices of the peace only. Cro. Car. 112.

In the county where they were committed ] H. 7 G. Smith and Potter. In the king's bench. In a qui tam on the 5 Eliz. for exercifing a trade, without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and the fact was laid at Cambridge, whereas the jurisdiction of the king's bench is at last settled to be restrained by the 21 J. c. 4. to actions arifing in the county where the king's bench fits, so that if they were to go on to trial, the plaintiff could have no effect of his fuit. And of this opinion was the court, and they made a rule that proceedings should be stayed. Str. 415.

And not elsewhere But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it so far impliedly repeals this restraint, and consequently leaves the informer at his liberty to fue in the courts at Westminfer. 2 Haw. 270.

Also, where a statute limits suits by an informer qui tam, to other courts than those of Westminster ball; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 Haw. 268.

Seffions hath not power without express words.

12. If jurisdiction be given to the sessions to hear and determine, and it is not faid by information; this shall be by indictment, and not information. Cro. Car. 112.

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13. By the 18 El. c. 5. Upon every information which shall Time of exhibitbe exhibited by a (common) informer, except for maintenance, cham- ing the informaperty, buying of titles, or embracery; a note shall be made of the tred. day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward, and not before: and no process shall be issued on such information, till it be exhibited in form aforesaid. f. 1.

14. And by the 21 J. c. 4. No officer shall enter any information, Oath to be made bill or plaint, count or declaration, till the informer bath made outh on exhibiting the before some of the judges of the court, that the offence was not com- information. mitted in any other county, and that he believeth in his conscience, that the offence was committed within a year before the information or fuit; the oath to be there entred of record. f. 3.

15. And, in the court of king's bench, the clerk of the crown Recognizance to shall not (except by order of court) exhibit or receive any information be given. in the name of the master of the crown office, for trespasses, batteries, or other misdemeanors, or issue any process thereupon, before he shall have taken, or shall have delivered to him, a recognizance from the profecutor, with his place of abode, title, or profession, to be entred,—to the person against whom the information is exhibited, in the penalty of 201. that he will effectually profecute such information, and abide by and observe such orders as the said court shall direat; which recognizance the faid clerk of the crown, and also every justice of the peace where the cause of such information shall arise, are empowered to take; after the taking or receipt whereof, he shall make an entry thereof upon record, and shall file a memorandum thereof in some publick place in his office, to which all persons may resort without fee. 21 J. c. 4. f. 2, 6.

In the name of the master of the crown office From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 Haw. 262.

16. And the general practice of the court of king's bench is, Rule to thew not to order an information to be filed, without first making a rule cause. upon the defendant to shew cause to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of some offence of an enormous kind, or dangerous ten-The defendant must be personally served with the rule, and if he do not at the day given for that purpole fatisfy the court by affidavits, that the substance of the charge is false or frivolous, or other reasonable cause against the prosecution, the court usually Barl. Inform. grants the information.

17. By the 21 J. c. 4. The like process shall be awarded, upon Process on an inan information by a common informer, as in an action of trespass vi formation. & armis at the common law. f. 1.

And consequently, the process in all such suits must be by attachment, or pone per vadios, and after by diffres infinite, where by the return the party appears to be sufficient, otherwise by capias. 2 Haw. 284.

18. And on every process upon an information by a common in Process to te informer, shall be indorsed as well the party's name that pursueth the dorsed. process, as also the statute upon which the information is grounded. 18 El. c. 5. f. 1.

# Information.

Process on a criminal information.

19. But on a criminal information, it is the usual practice of the crown office, first, to award a subpæna; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the service of the subpæna, to make out a capias of course, where the defendants are informed against in their private capacity, and a distringuis, where they are sued as a corporation aggregate. 2 Haw. 284.

Ceneral iffue,

20. If any information, suit, or action, shall be brought against any person on a penal statute, the defendant may plead the general issue, and give the special matter in ewidence. 21 J. C. 4. 1. 4.

Information not quashed upon motion.

21. The court will not generally quash an information upon motion, but the party must either plead, demur, or move in arrest of judgment. 1 Salk. 372.

Certainty required in an information.

22. But feeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not so found, but is only the allegation of the officer or person who exhibits it; whatsoever certainty is required in an indictment, the same at least is necessary also in an information; and consequently as all the material parts of the crime must be precisely found in the one, so must they be precisely alledged in the other, and not by way of argument or recital. 2 Haw. 260, 1.

Not aided by the flatutes of jeofails. 23. And therefore the flatutes of jeofails (from J' ay faille, I have failed), or the flatutes that do remedy overfights in pleading, extend not to informations. Wood 939.

Information good as to part.

24. If an information contain feveral offences against a statute, and be well laid as to some of them, but defective as to the rest, the informer may have judgment for so much as is well laid, 2 Haw. 266.

Costs against the plaintiff.

25. Generally, if a (common) informer shall willingly delay his suit, or discontinue, or be nonsuit, or shall have a werdict or judgment against him, he shall pay costs to the defendant. 18 El.

And in the court of king's bench particularly, if the defendant shall appear and plead to issue, and the prosecutor shall not at his own costs, within a year after issue joined, procure the same to be tried, or if a werdist passes for the defendant, or the informer procure a noli prosequi to be entred, the said court of king's bench may award the defendant his costs, unless the judge shall certify that there was a reasonable cause for exhibiting such information. And if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance abovementioned, to compel him therewate. 4 & 5 W. C. 18. f. 2.

Unless the judge shall certify] E. 13 G. 2. K. and Woodfall. Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant is acquitted, the court is authorized to award costs to the defendant; unless the judge shall at the trial certify there was a reasonable cause. In this case, no such certificate

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certificate was asked; but it was insisted on for the prosecutor, that it was discretionary in the court. The chief justice certified ore tenus, that it was a verdict against evidence; but then he and all the others held, that it was now too late to inquire into the probable cause; and that it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had Str. 1131.

26. But it feems to be in a great measure fettled, that an in- Costs against the former upon a popular statute shall in no case whatsoever have his defendant. cofts, unless they be expresly given him by such statute; for it is certain, that he cannot recover them by the common law, for that doth not give costs in any case: neither can he recover them by the statute of Gloucester, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be faid in any popular action. But it feems agreed, that an action on a statute by the party grieved, for a certain penalty given by such statute, is within the statute of Glouceffer, because such penalty is intended him by way of recompence for his particular damage by the offence prohibited; and if he could recover that only, and no more by way of costs, it would be in most cases in vain for him to sue for it, since the costs of fuit would exceed it. But it is faid, that no costs shall be recovered in an action on a statute, which gives no certain penalty to the party grieved, but only his damages in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this case, as in the former; because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 Haw. 274.

27. No (common) informer shall compound or agree with the de- Informer come fendant, but after answer made in court, nor after answer, but by pounding. the order or consent of the court; on pain of being set in the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 10 l. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the justices of assize, and justices of the peace in sessions, may bear and determine all offences against this act. 18 El. c. 5. f. 4.

28. And if the defendant plead a recovery by a former action, Collusive action, which former action shall be found to have been collusive; the plaintiff shall recover, as the' no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be impri-Joned two years, by process of capies and outlawry, and that as well at the king's fuit, as of every other that will fue. 4 H. 7. c. 20.

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, banging the same action, shall be available to surcease the said action, indictment, process, or execution. id.

29. M. 7 G. 2. K. and Jocamb. The court held, that a qui Information not tam information is not to be quashed upon motion. The same quashed upon having been often refused before. Str. 185, 953.

Form

# Information.

Form of an information qui tam.

Westmortand. B E it remembred, that A. I. of \_\_\_\_ in the court of \_\_\_\_ gentleman, who as well for our lord the now king, as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the faid county, and also to bear and determine divers felonies, trefpasses, and other misdemeanors in the said county committed, at their general quarter fessions of the peace bolden at - in and for the faid county, the - day of - in the --year of the reign of \_\_\_\_ in his proper person; and as well for the same lord the king, as for himself, giveth the court here to understand and be informed, That A. O. late of \_\_\_\_\_ in the county afore-faid, yeoman, on the \_\_\_\_\_ day of \_\_\_\_ in the year aforesaid, - aforesaid, in the county aforesaid, not regarding the laws and statutes of our said lord the king, but intending to - with force and arms [Here insert the offence, with the same precision as in an indicament] against the form of the statute in that case made and provided: Whereupon the aforesaid A. I. as well for the said lord the king, as for himself, prayeth the advice of this court in the premisses; and that the aforesaid A. O. may for seit the sum ofaccording to the form of the statute aforesaid; and that he the same A. I. may have one moiety thereof, according to the form of the statute aforesaid; and also that the aforesaid A. O. may come here into this court, to answer concerning the premisses; and there are pledges of prosecuting, John Doe and Richard Roe. And hercupon it is commanded to the faid A.O. that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to our faid lord the king, as to the faid A. I. who as well for the faid lord the king, as for himself, doth prosecute, of and concerning the premisses, and further to do and receive what the said court Shall consider in this behalf.

> Ingroffing. See Forestalling. See Cottages. Inmates. Inns, Innkeepers. See Alehouses. Insolvent debtors. See Debtors.

# Inzollment.

O manors, lands, tenements, or hereditaments, shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take any effect in any person, or any use thereof to be made by reason only of any bargain and sale there-

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of, except the same bargain and sale be made by writing indented, fealed, and inrolled in one of the king's courts of record at Westminster; or else within the county where the lands lie, before the custos rotulorum, and two justices, and the clerk of the peace, or two of them at the leaft, whereof the clerk of the peace to be one: The fame inrollment to be made in fix months after date of the writings: Paying, where the land exceeds not 40 s. a year, 25. to wit, 12 d. to the justices, and 12 d. to the clerk; and where it exceeds 40 s. a year, then paying 5 s. half to the justices, and half to the clerk: And the clerk of the peace shall inroll and ingross the fame in parchment: The fame to be kept amongst the records of the county. 27 H. 8. c. 16.

In the counties of Lancaster, Chester, and Durham, they may be inrolled in the respective courts there, or at the affizes.

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The inrolling of deeds and wills of Papifts, belongs to title Popery.

Tourneymen. See Servants, and Appzentices.

> See Effreats, Jurozs. Mues.

## Judgment.

F judgments, some are fixed and stated; as in cases of Judgments certreason, felony, tremunire, and misprissions; the parti-tain.

cular forms of which may be seen under their respective titles.

2. Others are discretionary and variable, according to the dif- Judgments vaferent circumstances of each case; Thus for crimes of an infamous riable. nature, fuch as petit larceny, perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy house, bribing witnesses to stifle their evidence, and other offences of the like nature; it feems to be in a great measure left to the prudence of the court to inflict such corporal punishment, and also such fine, and binding to the good behaviour for a certain time, as shall feem most proper and adequate to the offence. 2 Haw. 445.

3. The court may affess a fine, but cannot award any corporal Judgment in the 3. The court may alleis a fine, but calliot award any offender's abpunishment against a defendant, unless he be actually present in offender's abfence.

2 Haw. 446.

4. Where there are several defendants, a joint award of one Judgment of a fine against them all, is erroneous; for it ought to be several joint fine. against each defendant; for otherwise, one who hath paid his proportionable part, might be continued in prison till all the others have also paid theirs, which would be in effect to punish him for the offence of another. 2 Hazv. 446.

Judgment against the verdict.

Judgment by particular sta-

## Judgment.

5. A fine is under the power of the court, during the term in which it is fet; and may be mitigated as shall be thought proper: but after the term, it admits of no alteration. 2 Haw. 446.

6. A judgment contrary to the verdict, is void. Read. Judgm. 7. By many statutes, peculiar punishments are appointed for feveral offences, as pillory, stocks, imprisonment and the like; and in all these cases, no room is lest for the justices discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct. Dalt. c. 188.

# Jurois.

NOTE; The statutes of the 4 & 5 W. c. 24. and 7 & 8 rary; but are referred to, and as it were adopted by the 3 G. 2. c. 25. Which act of the 3 G. 2. c. 25. is made perpetual by the 6 G. 2. c. 37. And all the said three acts of 4 & 5 W. 7 & 8 W. and 3 G. 2. are required to be read at every Midsummer

Trial by juries is the Englishman's birth right, and is that happy way of trial, which notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. Tr. p. pais 3. Dalt. c. 186.

Concerning which, I will treat in the order following:

I. Who may or may not be jurors.

II. Of making and returning lifts of jurors.

III. Of the sheriff's summoning and returning jurors.

IV. Of the challenge of jurors.

V. Of the demeanor of jurors in giving their verdict.

VI. Of the indemnity and punishment of jurors.

#### I. Who may or may not be jurors.

1. Mr. Hawkins fays, it doth not feem to be any where holden, grand jurymen. that none but freeholders ought to be returned on a grand jury. 2 Haw, 216, 217.

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But in another place he says, that by the common law, every grand juryman ought to be a freeman. 1 Haw. 215.

And L. Hale says, touching the yearly value of the estate of a grand juryman, he doth not find any thing determined; but free-holders they ought to be. 2 H. H. 155.

But in Yorksbire, they are to have 80 % a year, freehold or co-

pyhold. 7 & 8 W. c. 32. f. 8.

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Also a grand juryman must be a lawful liege subject; and consequently, neither under an attainder of any treason or felony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the defect of any of the qualifications abovesaid. 1 Haw, 215.

2. In the courts at Westminster, and city of London, the jurors Jurymen in the shall be housholders within the city, and have lands, tenements, minster. or personal estate, to the value of 100 l. 3 G. 2. c. 25. s. 19, 20.

And by the 4 G. 2. c. 7. f. 3. Leaseholders in the county of Middlesex, where the improved rents amount to 50 l. a year, shall

be liable to ferve on juries.

3. At the affizes or fessions in the country, every juror, other At the affizes or than strangers per medictatem linguæ in England, shall have in his sessions. own name, or in trust for him, within the county, 10 l. a year, and in Wales 6 l. a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demession, or in rents, or in all or any of them, in see simple, see tail, or for the life of themselves, or some other person: and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own eath. 4 & 5 W. c. 24. f. 15. 3 G. 2. c. 25. f. 20.

And by the 3 G. 2. c. 23. f. 18. Persons having an estate in possession in land in their own right, of 201. a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, shall

be liable to ferve on juries.

From hence it appears, that lands freehold, copyhold, antient demesne, or leasehold, do render persons liable to serve on juries. And some have thought that all lands are included under these denominations. And in Coke's copybolder, p. 14. it is said, that that land soever is not copyhold, is freehold. And in Calibr. 41. it is faid, that copyhold lands may differ in name, but not in nature; for altho' copyhold lands be specially so called, because holden by copy of court roll, and customary lands by some special custom; yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless, altho' all copyhold lands are customary, yet all customary lands are not copyhold, and confequently, as such, do not qualify a man to serve on juries. Of which kind of customary lands, not being copyhold, the greater part of the county of Westmorland in particular doth consist. For which cause (and by reason of the number of persons disqualified VOL. II.

# Jurozs.

by being quakers) the jurors in that county are in comparison but few. To remedy which inconvenience, it seemeth not unreasonable, that in the statutes limiting the qualification of jurors, amongst other denominations of tenure, the word customary should be inserted; for why should a copyholder of 10 l. a year be obliged to serve, and a customary tenant of 100 l. a year be exempted?

Jurors on trials of foreigners. 4. As to the strangers per medietatem linguæ abovementioned, it is enacted by the 28 Ed. 3. c. 13. that in inquests to be taken amongst aliens and denizens, before any judges, one half of the inquest shall be denizens, and the other half aliens, if so many there are

And by the 27 Ed. 3. ft. 2. c. 8. Before the mayor of the staple, if both parties be strangers, the inquest shall be taken by strangers; if both be denizens, by denizens; if one party be denizen, and the other alien, half of the jury shall be denizens, and half aliens.

And these aliens need not have any qualification by their estate. 8 H. 6. c. 29.

But it feems that the English half of the jury ought to have

estates of the same value as in other cases. 2 Haw. 419.

But by the 13 & 14 C. 2. c. 11. s. 11. In actions concerning tonnage and poundage, or ships or goods to be forseited by reason of unlawful importation or exportation, there shall not be any party jury, but such only as are natural born subjects.

Jurois in towns corporare.

In the torn.

In the leet.

5. In towns corporate: Trials of felons shall be by men worth 401. in goods, tho' they have no freehold. 23 H. 8. c. 13.

And in 3 Salk. 81. it is faid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the statutes which require jurors to be of such and such sufficiency, do generally exempt cities, boroughs, and towns corporate.

6. In the torn: Jurors shall have 20 s. a year freehold; or 26 s. 8 d. copyhold. 1 R. 3. c. 4.

7. In the leet: It is faid by some books, that any person happening to be present at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the precincts of the leet, or not: by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 Haw. 69.

On the coroner's inquest.

8. The coroner's jury, upon inquests taken before him, are to be of the neighbouring towns; but no qualification by estate is required by any statute. 2 H. H. 152.

9. Jurors to inquire of the concealments of other inquests, shall have lands of 40 s. a year. 3 H. 7. c. 1.

lands or tenements of 40 s. a year. 8 H. 6. c. 9.

land, or freehold; or 26s. 8 d. copyhold. 19 H. 7. c. 13.

12. In Yorksbire: No person having 1501. a year, of such estate as will qualify him to serve on juries, shall be summoned to

On other jurors concealing prefentments.

On inquiries of forcible entry.

On inquiries of riots.

In Yorkshire.

the fessions; but only persons less able to bear the expence of attending the affizes. 1 An. ft. 2. c. 13. f. 3. And if he doth ferve at the sessions, it shall not fatisfy his turn, but he shall attend the affizes nevertheless. 10 An. c. 14. f. 6.

13. Young men, under 21 years of age, shall not ferve upon Persons under

juries. 7 W. c. 32. f. 4.

14. Old men above 70, persons continually sick, or being dis- Persons above eased at the time of the summons, or not dwelling in the county, age, infirm, shall not be put in juries of petit affizes; on pain of the sheriff paying damages to the party grieved, and being amerced to the king. 13 Ed. 1. ft. 1. 6, 38.

And the equity of this statute, and also the reason of the thing, feem plainly to far to extend to grand juries, that if it shall appear, that any of the persons abovementioned be returned on a grand jury, the court will easily excuse their non-appearance. But it feems clear, that any fuch persons being returned on a grand jury, may lawfully serve upon it if they think fit. 2 Haw. 216.

15. The jury ought to be men; yet there shall be a jury of In what case women, to try if a woman be ensient, upon the writ de ventre in- women shall be

Spiciendo. Tr. p. pais 86.

16. Apothecaries, within London and seven miles thereof, being Apothecaries exfree of the company; and country apothecaries, who have ferved empted. feven years apprenticeship,-shall be exempted from serving on juries, and their return shall be void, unless they shall voluntarily consent to serve. 6 & 7 W. c. 4.

17. Clergymen cannot be impanelled upon juries. Lamb. 396. Clergymen.

18. Diffenting teachers, qualified under the toleration act, are Diffenting exempted from serving on juries. 1 W. c. 18. f. 11.

19. Also quakers. 7 & 8 W. c. 34 f. 6. Quakers. 20. By the 4 & 5 W. c. 24. f. 21. No writ de non ponendis in Writs of exassifis & juratis, shall be granted, unless upon oath made, that emption. the suggestions upon which it is granted, are true.

And the jurors ought to come in person and claim their privi-

lege; for the sheriff cannot return it. Tr. p. pais 87.

#### II. Of making and returning lifts of jurors.

1. The justices at Midjummer sessions, shall issue forth their war- Precepts to the rants (A) under the hands and feals of two or more of them, to constables. the high constables, requiring them to issue forth their precept to the petry constables, thereby directing and requiring them to make and return true lists in writing, of the names and places of abode, of all persons within their respective constablewicks, qualified to ferve on juries, with their titles and additions, between the ages of 21 and 70. High constable failing to iffue his precept, shall for-7 5 8 W. c. 32. feit 10 l, on conviction at the affizes or fessions. 8 & 9 W. c. 10. 3 & 4 An. c. 18. f. 5.

2. The petty constables, on request to any parish officer who Petty constables shall have in his custody any of the rates for the poor or land tax, may inspect the shall have free liberty to inspect such rates, and take from thence rates. the names of freeholders, copyholders, or other persons qualified

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d to the to ferve on juries, dwelling within their respective precincts.

3 G. z. c. 25. f. I.

Lists to be put door.

3. And shall yearly, 20 days at least before Michaelmas, upon up on the church two or more Sundays, fix on the door of the church, chapel, and every other publick place of religious worship, an exact list of persons intended to be returned; and shall leave at the same time a duplicate thereof, with a churchwarden or overfeer, to be perufed by the parishioners without fee, to the end that notice may be given of persons qualified who are omitted, or of persons inserted by miltake who ought to be omitted. 3 G. 2. c. 25. f. 1.

Penalty on the petty constable, for inserting perfons wrongfully.

4. And if such petty constable shall wilfully omit any person who ought to be inferted, or infert any one who ought to be omitted, or shall take any reward for omitting or inferting any person; he shall forfeit 20 s. on conviction before one justice, on confession, or oath of one witness; half to the informer, and half to the poor of the parish or place, for which the list is returned: if not paid in five days, to be levied by diffress. And such justice shall, in writing under his hand, certify the same to the next fessions; who shall direct the clerk of the peace to insert or firike out the name of such person so inserted or omitted wrong-3 G. z. c. 25. f. 2.

Lifts to be delivered in at the fessions.

5. The faid petty constables, at Michaelmas fessions, shall de-

liver in the lists in open court. 7 & 8 W. c. 32. S. 4.

Or, instead of this, after they have compleated their lists, it shall be sufficient if they subscribe the same in the presence of one justice, and at the same time attest the truth thereof upon oath to the best of their knowledge or besief: And then the said lists, being first signed by the justice, and subscribed as aforesaid, shall be delivered by the faid petty conflables to the high conflables, who shall deliver in the fame at the faid sessions in open court, attesting at the same time upon oath their receipt of such lists from the petty constables, and that no alteration hath been made therein fince their receipt thereof. 3 G. 2. c. 25. J. 7.

Penalty on petty returning lifts.

6. The constable failing to make return, shall forfeit 5 1. to the constables for not king, to be recovered by bill, plaint, or information. 7 & 8 W.

c. 32. J. 4

Persons not qualified, how difcharged.

7. And if any person, not qualified, shall find his name mentioned in fuch lift, and the person required to make such lift shall refuse to omit him, or think it doubtful whether he ought to be omitted; the justices at the sessions to which the lists shall be returned, on fatisfaction from the eath of the party complaining, or other proof that he is not qualified, may order his name to be Aruck out, or omitted to be entred in the book. 3 G. 2. c. 25.

Lifts to be entred by the clerk of the peace;

8. The justices shall then cause the lists to be fairly entred in a book by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the sessions. 7 & 8 W.

on pain of 201.

c. 32. S. 4. 9. Clerk of the peace neglecting his duty herein, shall forfeit 20 1, to him who shall sue by indictment at the sessions. 3 G. z. 1. 25. f. 2. (Quere, Whether he may be compelled to draw the indictment?)

10. Duplicates

10. Duplicates of the faid lifts, when delivered in at the fef. Duplicates therefions, and entred in fuch book to be kept by the clerk of the peace of to be delivered for that purpose, shall during the said sessions, or within ten days to the sheriff. after, be delivered by the clerk of the peace to the sheriff. 3 G. 2. c. 25. f. 2.

11. And the theriff shall immediately take care, that the names The same to be shall be entred alphabetically, with their additions and places of entred by the abode, in a book to be kept by him for that purpose a C. ? abode, in a book to be kept by him for that purpose. 3 G. 2.

c. 25. J. z.

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12. And if the sheriff shall summon and return any person to Sheriff shall rethe affizes, whose name is not in the duplicates; the judge may, turn none but on examination in a summary way, fine him not exceeding 101. plicates. nor less than 40s. 3 G. 2. c. 25. f. 3.

#### III. Of the sheriff's summoning and returning jurors.

1. By a clause in the commission of the peace, it is said,— We command our sheriff, that at certain days, which you (the mon jurors to indices) shall make known to him, he can't to come before you the fessions. justices) shall make known to him, he cause to come before you, fo many and fuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth shall be the better known and inquired into.

- Sheriff to fum-

2. It feems that justices of the peace may not order a jury to Whether the be returned immediately, nor on the same day, for the trial of a seffions may orprisoner arraigned before them, as justices of gaol delivery may, der a jury to be unless the crime amount to felony, or the party consent to be tried diately. immediately. 2 Haw. 406.

3. Also it seems that a jury may not regularly be returned be- Whether by fore justices of the peace in their sessions, by a bare award of the court without court, as before justices of gaol delivery; but that there ought precept. to be a particular precept to the sheriff for that purpose. 2 Haw. 405, 406.

4. But in cases of felony, it is agreed (4 Inft. 164.) and is the How they may usual practice, after the prisoners are arraigned and have pleaded do the same in cases of selony. to the country, for the justices to issue a precept to the sheriff, in nature of a venire facias, which may bear teste the same day that the prisoners plead, commanding the sheriff to return 24 jurors, to try the issue upon such a day; or they may make it returnable the same day that the prisoner pleads, as at one of the clock in the afternoon, or the like: and this precept must be in the name, and under the seals of the justices, or two of them (12.) and not barely by an award upon the roll. 2 H. H. 261, 262.

5. The writ of wenire facias by the statute of the 4 & 5 W. Form of the vec. 24. shall be after this form: The king &c. We command &c. that nire facias, you cause to come before &c. twelve free and lawful men of the vicinage of A. every of whom shall have 101. of land, tenements, or nents, by the year, at least; by aubam &c. and subo neither &c.

6. The reason why they are required to come from the vicinage Why the juro is, for that the neighbours are prefumed to know what is done in thall be return the neighbourhood. 1 Inft. 158.

of the neighhourhood

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# Aurors.

But yet this is not necessarily required; for they of one fide of the county, are by law of the neighbourhood, to try an offence

of the other fide of the county. 2 H. H. 264.

And by the 4 An. c. 16. f. 6, 7. and 24 G. 2. c. 18. f. 3. to prevent challenges for default of hundredors, every venire facials for the trial of an issue in any action in the courts at Westminster, or in an action or information on a penal flatute, shall be awarded of the body of the county where such issue is triable.

How many shall be returned and ferve.

7. And altho' the words of the writ be twelve, yet by the ancient course, the sheriff must return 24, for the expedition of justice; for if 12 only should be returned, a man would seldom have a full jury appear; and in this case usage and custom makes the law. 2 H. H. 263. Read. Jur.

But the general precept that iffues before a fessions is, to return 24; and commonly the sheriff returns upon that precept 48.

2 H. H. 263.

But in issues of nist prius, the sheriff shall, upon his return of the writ of venire facias juratores (unless in causes intended to be tried at bar, or where a special jury shall be appointed) annex a panel to the faid writ, containing the christian and furname, additions, and places of abode, of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every venire facias, for the trial of all iffues at the same assizes; which number of jurors shall be not less than 48 in any county, nor more than 72, unless the judges shall order otherwife. And the writs of babeas corpora juratorum, or diffringas, subsequent to such writ of wehire facias juratores, need not have inferted in the bodies of fuch writs the names of all the persons contained in such panel, but it shall be sufficient to infert in the mandatory parts of fuch writs respectively, the several bodies of the persons named in the panel annexed to this writ, or words of the like import, and to annex to fuch writs respectively panels, containing the same names as were returned in the panel to such venire facias, with their additions and places of abode, that the parties concerned in any fuch trials may have timely notice of the jurors who are to serve at the next assizes, in order to make their challenges to them, if there be cause; and the persons named in such panels shall be summoned at the next affizes, and no other. 3 G. 2. c. 25. s. It is true, this gives them an opportunity of knowing how to make their challenges; but it also gives them an opportunity to another purpose, namely, of labouring the jurors, a practice which cannot be too much discouraged.

In Wales; The sheriff shall summon out of every hundred or commote, not less than ten, nor more than fifteen; unless the

judges shall order otherwise. 3 G. 2. c. 25. f. 9.

And in the counties palatine; The sheriff shall summon not less than 48, nor more than 72 (unless the judges order otherwise); and shall eight days before the courts be held, cause a list to be made of the persons summoned, which shall be hung up in the sheriff's office, to be inspected by any person. 3 G. 2. c. 25. J. 10.

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Upon the grand jury; there may be, and usually are, more than 12: but if there be 12 affenting, tho' others diffent, it is not necessary for the rest to agree. 2 H. H. 161.

But upon a trial by a petit jury; it can be by no more nor less

than 12, and all affenting to the verdict. 2 H. H. 161.

In the county of York; only one panel of 48 freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the affizes; and at the sessions, not above 40, either upon the grand inquest, or other service there. 7 & 8 W.

c. 32. f. 8.

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8. Every summons of jurors shall be made by the sheriff, his Time and manofficer, or lawful deputy, fix days before at the least (and in Wales ner of summons. eight days before, and in the counties Palatine 14 days before, 3 G. 2. c. 25. f. 9, 10.) shewing to every person so summoned the warrant under the feal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given by leaving a note in writing, under the hand of fuch officer, containing the contents thereof, at the dwelling house of such juror, with some person there inhabiting in the fame. 7 & 8 W. c. 32. f. 5.

9. If the sheriff, his deputy, or bailiff, neglect their duty Penalty on the herein, or excuse any person for favour or reward; he shall for sheriff or bailiff feit 20 1. to him who shall sue. 7 & 8 W. c. 32. f. 6. Or, neglecting.

he may be fined 101. or under, by the judge of affize. 3 G. 2.

c. 25. J. 6.

And no bailiff, or other officer, shall summon any person, other than fuch whose name is specified in a mandate signed by the theriff or under theriff, and directed to fuch bailiff or other officer; on pain of 10 l. on a summary conviction before the judge

of assize. 3 G. 2. c. 25. s. 6.

10. No persons shall be returned as jurors at the assizes; who How often they have served within one year before in the county of Rutland, or shall be sumtwo years before in any other county (not being a count of a moned and ferve. city or town, and except the counties of York, and of Middlefex); on pain that the sheriff, on examination and proof in a summary way, shall be fined by the judge not exceeding 51. 3 G. 2.

c. 25. J. 4. And the sheriff shall enter in a book, the names of such persons as shall be summoned and shall serve at the affizes, with their additions and places of abode alphabetically, and the times of their fervices; and every person who hath served, shall (on application by him made to the sheriff) have a certificate gratis, testifying his attendance: and the faid book shall be transmitted to the succeed-

ing sheriff. 3 G. 2. c. 25. s. 5.
In the county of York; They shall not be returned above once in four years, at the affizes or fessions. 7 & 8 W. c. 32. s. 7.

10 An. c. 14. S. 5.

And if the sheriff of the county of York, neglect to keep such book as above, or to enter the names, or to deliver over to his successor the entries made for four years next before, or to deliver the certificate gratis; he shall forfeit 100 l. half to the king, and half to him that shall sue. 3 & 4 An. c. 18. s. 3.

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And if he shall summon or return any juror, who shall have ferved within four years, and shall not on producing the certificate discharge the summons or return, and thereof give notice to the party summoned, six days before the assizes or sessions; he shall forfeit 201. to the party, with sull costs. 3 & 4 An. c. 18.

In the county of Middlefex: No person shall be returned to serve as a juror, at any sessions of nist prius, who hath been returned at the two terms or vacations next before; on pain of the sheriff being fined by the judge s l. or under. 4 G. 2. c. 7. l. 2.

ing fined by the judge 5 l. or under. 4 G. 2. c. 7. f. 2.

And by the 7 & 8 W. c. 32. f. 9. The inhabitants of the city and liberty of Westminster, shall be exempted from serving in any jury at the sessions for Middlesex, by reason of their attendance

at the courts of Westminster ball.

it shall appear to the court, that it is necessary that the jurors should have the view of the place in question, they may order special writs of distringus or babeas corpora to issue, by which the sheriff shall be commanded, to have six out of the first 12 of the jurors, or some greater number of them, at the place in question some convenient time before the trial; who shall have the matters in question shewn to them by two persons in the said writs named; and the sheriff by a special return upon the same, shall certify that the view hath been had according to the command of the said writ. 4 An. c. 16. s.

And by the 3 G. 2. c. 25. f. 14. Where a view shall be allowed, fix or more of the jurors in the panel, who shall be confented to by the parties on both sides, or their agents, or if they cannot agree, by the proper officer or judges of the court,—
shall have the view, and shall be first sworn, or such of them as appear, before any drawing, and others shall be drawn to make up

he number.

12. Tr. 8 W. A rule was made, that when the master is to strike a jury, viz. 48 out of the freeholders book, he shall give notice to the attornies of both sides to be present; and if the one comes, and the other does not, he that appears shall according to the ancient course strike out 12, and the master shall strike out other 12 for him that is absent. 1 Salk. 405.

But if by rule of court, the master is ordered to strike a jury, in case it be not expressed in such rule, that the master shall strike 48, and each of the parties shall strike out 12; the master is to strike 24, and the parties have no liberty to strike out any. I Salk.

405. M. 8. W.

And the party who shall apply for a special jury to be struck, shall pay the sees for the striking such jury, and shall not be allowed the same on taxation. 3 G. 2. c. 25. f. 16. And also shall pay all the expences occasioned by the trial of the cause, and shall have no other allowance for the same upon taxation of costs, than he would be intitled to, if the cause had been tried by a common jury; unless the judge shall in open court certify upon the back of the record, that the same was a cause proper to be tried by a special jury. 24 G. 2. c. 18. f. I.

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And no person who shall serve upon a special jury, shall be allowed more than the fum which the judge shall think reasonable, not exceeding one guinea, except in causes wherein a view is directed. 24 G. 2. c. 18. f. 2.

13. Where a full jury at nift prius (or on indictments, infor- Tales, mations, or other actions on penal flatutes, 4 & 5 P. & M. c. 7.) shall not appear, or shall be reduced below the number by challenge, the judges on request of the plaintiff (or defendant, 14 El. c. 9.) may command the sheriff to appoint so many other able perfons of the county then prefent at the affizes, as shall make up a full jury; whose names shall be annexed to the panel. 35 H. 8. c. 6.

And by the 4 & 5 W. c. 24. f. 18, 19. these tales-men (tales de circumstantibus) shall have each 5 l. year, of like estate as other jurors; in Wales, 3 1.

But by the 7 & 8 W. c. 32. f. 3. Tales men in nisi prius shall be returned out of the other panels, returned to serve at the same affizes.

And the parties may have their challenges to the tales, as to

other jurors. 35 H. 8. c. 6. f. 7.

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And if fuch tales-men, after they be called, be present, and do not appear, or after appearance do wilfully withdraw themselves, the judges may fine them; which shall be levied as iffues forfeited by jurors, for default of their appearance at common law, have been accustomed to be levied. 35 H. 8. c. 6. f. 9.

By the 4 & 5 W. c. 24. f. 20. No fee shall be taken by any sheriff, clerk of assize, or any other person, for the return of any tales, or upon the account of any tales returned; on pain of 10 l.

half to the profecutor, and half to the king.

14. No sheriff shall return any juror, without the addition of Addition to be his dwelling, or fome other addition by which he may be known returned. and no extract of iffues shall be delivered out, without such addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in sessions, or elsewhere. 27 El. c. 7.

15. If the clerk of affize, or other officer, shall record the ap- Penalty of repearance of any person, who did not appear; he shall, on con- cording persons viction before the judge of affize in a fummary way, forfeit not who did not appear.

exceeding 101. nor under 40 s. 3 G. 2. c. 25. f. 3.

16. Last of all; The name of each person summoned to try Drawing jurors the issues of nist prius, with his addition and place of abode, names for trial, shall be written in several and distinct pieces of parchment or paper, as near as may be of equal fize, and delivered to the marshal by the under sheriff. And the same shall by the marshal be rolled up, all, as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose. And when any cause shall be brought on to be tried, some indifferent person, by direction of the court, shall in open court draw out 12 of the faid parchments or papers one after another. And if any of the persons, whose names shall be so drawn, shall not appear, or be challenged and fet aside; then such further number, until 12 be drawn who shall appear, and after all causes

of challenge, shall be allowed as fair and indifferent. And the faid 12 persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being fworn, shall be the jury to try the cause. And the names of the persons so drawn and sworn, shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until fuch jury shall by consent of the parties, or leave of the court, be discharged. And then the same names shall be rolled up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn. And so toties quoties, as long as any cause remains then to be tried. Provided, that if any cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict, or be discharged; the court may order 12 of the residue of the faid parchments or papers, to be drawn as aforefaid. 3 G. 2, £. 25. f. 11, 12.

#### IV. Of the challenge of jurors.

And berein,

i. Of the several kinds of challenge.

ii. When the challenge is to be taken.

iii. How the challenge shall be tried.

iv. How panels may be reformed by the court, without challenge.

#### i. Of the several kinds of challenge.

Two kinds of challenge.

There are two kinds of challenge; either to the array, by which is meant the whole jury as it stands arrayed in the panel, or little square pane of parchment on which the jurors names are written: or to the polls, by which are meant the several particular persons or beads in the array. 1 Inst. 156, 158.

1. Challenge to the array, is in respect of the partiality or default of the sheriff, coroner, or other officer that made the return:

and this is two-fold;

(1) Principal challenge to the array: which if it is made good, is a fufficient cause of exception, without leaving any thing to the

judgment of the triers.

Principal challenge to the array.

To the array:

Causes of challenge of this fort, are such as these: If the sheriff, or other officer, be of kindred or affinity to the plaintist or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintist or defendant, the whole array shall be quashed. If the plaintist or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintist or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party. Or if the sheriff have parcel of the land

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depending upon the same title. Or if the sheriff, or his bailiss which returned the jury, be under the distress of either party. Or if the sheriff, or his bailiss, be either of counsel, attorney, officer, or servant of either party; gossip; or arbitrator in the same matter, and treated thereof. 1 Inst. 156.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quashed: but now, by the 24 G. 2. c. 18 f. 4. No challenge shall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is party.

And the subject may challenge the array against the king; as in traverse of an office, he that traverseth may challenge the array: And so it is in case of life. 1 Inst. 156.

And where a subject may challenge the array, for unindifferency, there the king being a party may also challenge for the same cause. 1 Inst. 156.

The array challenged on both fides shall be quashed. I Infl.

(2) Challenge to the array, for favour. He that taketh this Challenge to the must shew in certain the name of him that made it, and in whose array for favour. time, and all in certainty. This kind of challenge, being no principal challenge, must be left to the discretion and conscience of the triers. It is if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the son of the sheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the sheriff marry the daughter of either party, or the like, this (as hath been said) is a principal challenge. 1 Inst. 156.

But where the king is party, one shall not challenge the array for favour; because in respect of his allegiance, he ought to favour the king more: but if the sheriff be a menial servant of the king, there the challenge is good. 1 Inst. 156. By which seems to be meant, that such challenge is not good, without shewing

some actual partiality in the sheriff. 2 Haw. 419.

But the king may challenge the array for favour. 1 Inft. 156.

2. Challenge to the polls is threefold:

(1) Peremptory. This is fo called, because a person may Peremptory challenge peremptorily, upon his own dislike, without shewing of challenge to the

This peremptory challenge shall not be allowed to the king; for it is provided by the 33 Ed. 1. st. 4. that he who challengeth a juror for the king, shall shew cause, and the truth thereof shall be inquired of. And this extends as well to criminal, as civil causes. However, if the king challenge a juror, he needs not shew any cause of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the person challenged. And if the defendant, in order to oblige the king to shew cause, presently challenge all the rest, yet it hath been adjudged, that the defendant shall be first put to shew all his causes of challenge, before the king need to shew any. 2 Haw. 413.

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And this peremptory challenge is not allowable to the party against the king, but only in case of treason or felony, in favour

of life. 1 Inft. 156.

But in case of treason or felony, the prisoner by the common law might peremptorily challenge 35, which was under the num. ber of three juries; but by the statute of the 22 H. 8. c. 14. f. 6. the number is reduced to 20, in petit treason, murder, and felony; and in case of high treason, and misprission of high trea. fon, it was taken away by the flatute of the 33 H. 8. c. 23. but by the statute of the 1 & 2 P. & M. c. 10. the common law was again revived for any treason, and therein the prisoner shall have his peremptory challenge to the number of 35. 156.

But as to all murders and other felonies, the statute of the 22 H. 8. c. 14. taking away the peremptory challenge of above 20 stands in force. 2 H. H. 269. But if the party challenge above that number, he shall not have judgment of death, but his challenge shall be overruled, and he shall be put upon his trial.

H. Pl. 259. 2 H. H. 270.

Note; The above aid statute of the 1 & 2 P. & M. c. 10. by mistake hath been omitted out of Mr. Hawkins's edition of the

Principal chal-

ge to the

polls.

(2) Principal challenge to the polls: where cause is shewn, but which if found true, stands sufficient of itself, without leaving any thing to the triers.

Causes of principal challenge to the polls, are such as these:

A peer is not to be fworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his dif 1 Inft. 156. 2 Haw. 415.

Want of freehold, is a good cause of challenge. 1 Inst. 156.

Also, if a person is an alien. 1 Inst. 156.

If the juror be within the age of 21, it is a good cause of

challenge 1 Inft. 157.

If a juror is above the age of 70, or is fick, or is non-resident in the county, he may fue out a writ of privilege for his discharge; but if he be returned and appear, he can neither be challenged by the party, nor excuse himself from not serving, if there be not enow without him. 2 Haw. 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law prefumeth that one kinfman doth favour another, before a stranger; and how far remote foever he is of kindred, yet the challenge is good.

Affinity, or alliance by marriage, is a principal challenge, if the same continues, or issue be had; otherwise, it is but to the

favour. 1 Inft. 157.

If the juror be godfather to the child of the plaintiff or de fendant, or they to his child, this is allowed to be a good challenge in our books. 1 Inft. 157.

If the juror have part of the land that dependeth upon the

same title, it is a principal challenge. 1 Inft. 157.

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Is hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 Haw. 418.

Likewise if the juror gave a verdict before, for the same cause, or upon the same title or matter, tho' between other persons.

1 Inft. 157.

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So likewise one may be challenged, that he was indictor of the plaintist or defendant in the same cause; for such a one, it may be thought, will not falsify his former oath. Lamb. 554. And if a grand juryman, who was one of the indictors in the same cause, be returned upon the petit jury, and do not challenge himself, he shall be fined. 2 H. H. 309.

If a juror hath been an arbitrator, chosen by the plaintiff or defendant in the same cause; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwise, if he were chosen indifferently by either of the parties. I Inst.

If he be of counsel, servant, or of see, of either party, it is a

principal challenge. i Inft. 157.

Also, if a juryman, before he be sworn, take information of the case, this is cause of challenge. 2 H. H. 306.

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cause of challenge. 1 Inst. 157.

But it is not a principal challenge to a juror, but only to the favour, that the profecutor was lately entertained at his house.

Actions brought either by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions, which do not imply malice or displeasure, are but to the favour. 

§ Inst. 157.

In a cause where the parson of a parish is party, and the right of the church cometh in debate, a parishioner is a principal chal-

lenge. 1 Inft. 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conficience, this is no challenge at all, but lawful for him to do it. 1 Inft. 157.

That the juror is a fellow fervant with either party, is no prin-

cipal challenge, but to the favour. 1 Inft. 157.

If the juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attaint for a falle verdict, or for perjury as a witness, or in a conspiracy at the suit of the king, or in any suit (either for the king or for any subject) be adjudged to the pillory, tumbrel, or the like, or to be branded or stigmatized, or to have any other corporal punishment, whereby he becometh infamous: these, and the like, are principal causes of challenge. 1 Inst. 158.

So it is, if a man be outlawed in trespass, debt, or any other action, for he is exlex, and therefore not a lawful man. I lnft.

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And old books have faid, that if he be excommunicated, he could not be of a jury. 1 Inst. 158.

Challenge to the

3. Challenge to the polls for favour. This is, when either polls for favour. party cannot take any principal challenge, but sheweth causes of favour, which must be left to the conscience and discretion of the triers, upon hearing their evidence, to find him favourable, or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands un-1 Inft. 157.

Challenge when to be taken.

#### ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 Haw. 412.

2. He that hath divers challenges, must take them all at once.

I Inft. 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. 1 Inft. 158.

4. After challenge to the array, and trial duly returned, if the fame party take a challenge to the polls, he must shew cause pre-

1 Inft. 158.

5. If a juror be formerly fworn, if he be challenged, the party must shew cause presently, and that cause must rise since he was fworn. 1 Inft. 158.

6. When the king is party, the defendant that challengeth for

cause must shew his cause presently. 1 Inst. 158.

7. But if a juror be challenged between party and party, and there be enough of the panel besides; the cause of challenge needeth not to be shewed, unless the other side challenges touts peravail. Tr. p. pais 143.

8. If a man, in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge him perempto-

rily. 1 Inft. 158.

9. The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. 2 Haw. 413.

10. The challenge to the array, must be in writing (C); but where the challenge is to the polls, it is a short way by a verbal challenge. Tr. p. pais 172.

Trial of challenges.

#### iii. How the challenges shall be tried.

1. The challenge of him who first challenged shall be first

tried. Tr. p. pais 144.

2. If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and fometimes by two of the jury, with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge found in favour of partialty, then by any other two assigned thereunto by the court. 2 H. H. 275.

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3. When any challenge is made to the polls, if it be before any jurors are fworn, the court shall chuse the triers; if two are sworn, they shall try; and if they try one indifferent, and he be sworn, then he and the two triers shall try another; and if another be tried indifferent, and he be sworn, then the two triers cease, and the two that be sworn on the jury shall try the rest: If the plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the plaintiff, and another by the defendant. Finch 112. I Inst. 158.

4. The triers oath is, "You shall well and truly try, whether "A.B. (the juryman challenged) stand indifferent between the

" parties to this issue : so help you god." 1 Salk. 152.

5. If the cause of challenge touch the dishonour or discredit of the juror, he shall not be examined on his oath; but in other cases, he shall be examined on his oath, to inform the triers.

1 Inft. 158. 1 Salk. 153.

6. If the array be quashed against the sheriff, the process of wenire facias juratores shall be directed to the coroners; if against any of the coroners, then process shall be awarded to the rest; if against all of them, then the court shall appoint certain elisors (so named ab eligendo), against whose return no challenge shall be taken to the array, because they were appointed by the court; but he may have his challenge to the polls. 1 Inst. 158.

# iv. How panels may be reformed by the court without Panels reformed by the court.

Besides the challenges which may be taken by the plaintist or defendant, it is enacted by the 3 H. 8. c. 12. that in cases where the king is party, the justices of affize, or of the peace in sessions, may reform the panels of jurors, by putting to and taking out of the names of the persons impanelled by their discretion; and if the sherist do not return the panel so reformed, he shall forseit 20 l. half to the king, and half to him that shall sue.

And this extends both to grand and petit juries. 2 H. H. 156. And hence it is, that if a prisoner be arraigned before the judge that sits upon the crown side, it is usual for the judge to send for a jury to the judge of nist prius, and when the jury is brought, the sheriff returns them between the king and the prisoner; which

is by virtue of this statute. 2 H. H. 265.

# V. Of the demeanor of jurors in giving their verdict.

1. By the law of England, a jury after their evidence given Jurors to be kept upon the iffue, ought to be kept together in some convenient without meat place, without meat or drink, fire or candle, and without speech or drink, with any, unless it be the bailiss, and with him only if they be agreed. 1 Inst. 227.

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Bailiff fworn to keep them.

Whether eating and drinking shall avoid the verdict.

2. And the bailiff ought to be fwom to keep them together, and not to fuffer any to speak with them. 2 H. H. 296.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is finable, but it shall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict; but if it be given for the defendant, it shall not avoid it, and so on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict. I Inst.

In what cases they may eat or

4. But with the affent of the justices they may both eat and drink; as if any of the jurors fall fick before they be agreed of their verdict, then by the affent of the justices he may have meat or drink, and also such other things as be necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they fo agree: and if they cannot agree, the justices may in fuch case suffer the jury to have both meat and drink for a time, to see whether they will agree. Dr. & St. 158.

May re-examine witnesses.

5. After their departure they may defire to hear one of the witnesses again, and it shall be granted, so he deliver his testimony in open court; and also they may defire to propound questions to the court for their fatisfaction, and it shall be granted, so it be in open court. 2 H. H. 296.

May hear no evidences but in court.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in iffue, or any evidence, or any writing touching the matter in iffue, which was not given in evidence, it shall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and fo on the contrary. But if the jury carry away any writing unfealed, which was given in evidence in open court, this shall not avoid their verdict, albeit they should not have carried it with them. 1 Inft. 227.

Cannot be difgiving a verdict. verdict.

7. A jury sworn and charged in a capital case, cannot be difcharged without charged (without the prisoner's consent) till they have given a 2 Haw. 439.

And the king cannot be nonfuit, for he is in judgment of law

ever present in court. 1 Inft. 227.

faying they are agreed, when they are not.

May be fined for 8. If a jury fay they are agreed, and it being asked who shall fay for them, they fay their foreman, but upon farther inquiry they are not agreed, they may be fined. 2 H. H. 309.

Casting lots for their verdict.

9. If the jury cast lots for their verdict, it shall be set aside, and they shall be fined for the contempt. 3 Keb. 805. 2 Lev. 140, 205. 2 Jones 83.

M. 12 G. Hale and Cove. The jury having fat up all night, agreed in the morning to put two papers into a hat, marked Plaintiff and Defendant, and so draw lots; Plaintiff came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict must be set aside; but

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the question was, whether the defendant should pay costs: the court inclined to give the plaintiff costs, comparing it to the case of a verdict against evidence; but at last it was agreed, that the costs should wait the event of the new trial. Str. 642.

10. The jury may give a verdict without testimony, when they Giving verdict themselves have conssance of the fact. Tr. p. pais 279. 1 Ventr. without evidence.

11. But if they give a verdict on their own knowledge, they Juror may be a ought to tell the court so; but they may be sworn as witnesses; witnesses, and the fair way is to tell the court before they are fworn that they have evidence to give. 1 Salk. 405.

For certainly it is of dangerous consequence, to receive a verdict against evidence given, on supposal that some of the jury knew otherwise, or on private information given by any juryman to the rest, where he cannot be cross examined. Tr. p. pais 209.

12. After they be agreed, they may in causes between party Private verdict. and party, if the court be risen, give a private verdict, before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court shall stand. 1 Inft. 227.

But in criminal cases of life or member, the jury can give no private verdict, but they must give it openly in court. 1 Inst. 227.

13. In all causes, and in all actions, the jury may give either Special verdict. a general or a special verdict, as well in causes criminal as civil; and the court ought to receive a special verdict, if pertinent to 3 Salk. 373. the point in islue.

Thus if one be indicted for grand larceny, that is, for stealing The value. goods above the value of 12d. yet the jury may find specially, that he is guilty, but that the goods are not above the value of 12 d. In which case, he shall only have judgment of petit larceny. 1 Haw. 95.

14. Jurors are to try the fact, and the judges ought to judge Jurors to try not according to the law that ariseth upon the fact. 1 Inst. 226.

But if they will take upon them the knowledge of the law upon fact. the matter, they may; yet it is dangerous, for if they mistake the law, they run into the danger of an attaint: therefore to find the special matter is the safest way, where the case is doubtful. 1 Inft. 228.

But if the jury find according to the direction of the judge in matter of law, altho' the judge be mistaken, yet the jury shall not be liable to attaint. L. Raym. 470.

15. It hath been adjudged, that if the jury acquit a prisoner of Finding against an indictment of felony against manifest evidence, the court may, evidence. before the verdict is recorded, but not after, order them to go out again, and re-consider the matter; but this by many is thought hard, and feems not of late years to have been so frequently practised as formerly. However it is settled, that the court cannot set. aside a verdict which acquits a defendant, of a prosecution properly criminal, as it seems that they may a verdict that convicts him, for having been given contrary to evidence and the direc-

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arked out, ording on for ; but tions of the judge, or any verdict whatfoever for a miltrial. 2 Haw. 442.

Varying from the verdict.

16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the first offer of their verdict, and that verdict which is recorded shall stand. 1 Inft. 227.

Verdict finding

17. A verdict finding an impossible matter shall not be void, if an impossibility. at the same time it find the substance of the indictment; but the 1 Haw. 77 furplus shall be rejected.

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Verdict how far to be taken strictly.

18. Verdicts shall not be taken so strictly as pleadings; but the substance of the thing in issue ought to be always found. 3 Salk.

Where they cannot agree.

19. It is faid, that if the jurors agree not, before the departure of the justices of gaol delivery into another county, the sheriff must fend them along in carts, and the judge may take and record their verdict in a foreign county. 2 H. H. 297. Tr. p.

pais 274, 285. I Ventr. 97.

But if the case so happen, that the jury can in no wise agree, as if one of the jurors knoweth in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination; the justices (as it seemeth) in such cafe may take such order in the matter, as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or otherwise, as they shall think best by their discretion, like as they may do, if one of the jury die before the verdict. Dr. & Stud. 158.

#### VI. Of the indemnity and punishment of jurors.

Threatning a juror.

1. If a man affault or threaten a juror, for giving a verdict against him, he is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of affize, he shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment. 1 Haw. 57, 58.

Juror not appearing.

2. Where more than one of the persons returned on a jury do appear, but not a sufficient number to take an inquest, and some of the others come within view of the court, or into the same town in which the court is holden, but refuse to come into the court to be fworn; upon proof of fuch matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of fuch defaulter's lands, and after fuch inquiry made, either fummon them to appear, on pain of forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any farther proceeding. But it feems, that fuch juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it: But a juror who hath actually appeared, and after makes default, is faid to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not; because his contempt appears to the court by its own record: yet even in this case, the court in discretion will sometimes only impose a small fine. Also it feems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to lose his iffues, or to be amerced, but not to be fined. 2 Haw. 146.

And by the 3 G. 2. c. 25. f. 13. In causes of nisi prius, every person whose name shall be drawn, and who shall not appear, after being openly called three times, shall on oath made of his having been lawfully summoned, forfeit not exceeding 5 1. nor less than 40 s. unless some reasonable cause be proved, by oath or affi-

davit, to the satisfaction of the judge.

3. If the grand jury at the affizes or fessions will not find a bill, Whether a grand the court may impanel another inquest (by the 3 H. 7. c. 1.) to jury may be fined for not finding a inquire of their concealments, and thereupon fet fines upon them: bill. But it seemeth that fines set upon grand inquests in any other manner, are not warrantable by law; for the privilege of an Englishman is, that his life shall not be drawn in danger without due presentment or indictment, and this would be but a slender screen or fafeguard, if every justice of the peace, or judge of affize, may make the grand jury present what he pleases, or otherwise fine 2 H. H. 160, 1.

4. If any juror do take of either party to give his verdict, he Juror taking a shall on conviction by bill or plaint, before the court where the bribe. verdict shall pass, forfeit ten times as much as he hath taken, half to the king, and half to him that shall sue. 5 Ed. 3. c. 10.

34 Ed. 3. c. 8. 38 Ed. 3. st. 1. c. 12.

5. It feems to be certain, that no one is liable to any profecu- Whether a juror tion whatfoever, in respect of any verdict given by him in a cri- may be prosecuminal matter, either upon a grand or petit jury; for fince the ted for a verdice fafety of the innocent, and punishment of the guilty, doth so matter, much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any paffion whatfoever. And therefore, lest they should be biassed with the fear of being harassed by a vexatious suit, for acting according to their consciences, the law will not leave any possibility for a prosecution of this kind. And as to the objection, that an attaint lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one; it may be answered, that in an attaint in a civil cause, a man's property is only brought into question a second time, and not his liberty or life. 1 Haw. 191. L. Raym. 469.

6. But where the jurors give a false verdict upon an issue joined Attaint in a ciin any court of record, and judgment thereupon, the party grie-vil cause. ved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the best men of the county are to be jurors, who are to hear the same evidence which was given to the petit jury, and as much as can be brought in affirmance of the verdict, but no other against it. And if these 24, who are called the grand jury, find it a false verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party shall be infamous, so as never to be received to be a witness, or a juror; shall forfeit his goods and chattels; and his lands and tenements shall be taken into the king's hands; his wife and children

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f his empt the court cast out of doors; his houses prostrated; his trees rooted up; his meadows ploughed up; and his body imprisoned. And seeing all trials of real, personal, and mixt actions depend upon the oath of 12 men, prudent antiquity inslicted a strange and severe punishment upon them, if they were attainted of perjury. 1 Inst. 294. Read. Jur.

But now by the statute of 23 H. 8. c. 3. The severity of this punishment is moderated, if the writ of attaint be grounded upon that statute; but nevertheless, the party grieved may at his election, either bring his writ of attaint upon that statute, or at the

common law. Tr. per pais 222.

But this proceeding seems to be intirely disused at this day; and in the place of attaint motions are now usually made for new trials, when a verdict is against evidence. Wood 1048. Read. Jur.

But there can be no new trial for or against the king. Tr. per

pais 210.

7. It feems to be the current opinion of the old books, that jurors are not subject to any profecution for a salse verdict except by way of attaint: And there seem to be very sew antient precedents for the punishment either of a grand or petit jury, merely for giving a verdict against evidence, or the direction of the court, either in a capital or civil matter. 2 Haw. 147.

And the fining and imprisoning of jurors for giving their verdict, hath several times been declared in parliament an illegal and arbitrary innovation, and of dangerous consequence to the government, and the lives and liberties of the subject. 2 Keb. 180.

Read. Fur.

And in Bushel's case, it was resolved by all the judges, upon a full conference together, that a jury is not finable for going against their evidence, where an attaint lies. And where an attaint doth not lie, L. Vaughan fays thus; " That the court could not fine a " juryman at the common law, where attaint did not lie, I think " to be the clearest position that ever I considered, either for au-" thority, or reason of law." And one reason for this is, because the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is shewed in court; they are of the vicinage, the judge is a stranger; they may have evidence from their own personal knowledge that the witnesses speak false, which the judge knows not of; they may know the witnesses to be stigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and so the judge knew as much as they, yet they might make different conclusions, as oftentimes two judges do; and therefore as it would be a strange and absurd thing, to punish one judge for differing with another in opinion or judgment, so it would be worse for the jury, who are judges of the fact, to be punished for finding against the direction of him, who is not judge of the fact. Tr. per pais 225. L. Vaugh. 135.

And to fay the truth, fays Lord Hale, it would be the most unhappy case that could be to the judge, if he at his peril must take upon him the guilt or innocence of the prisoner: and if the judge's

opinion

Whether they may be fined for their verdict.

## Jurozs.

opinion must rule the matter of fact, the trial by jury would be useles. 2 H. H. 315.

But what if a jury give a verdict against all reason, convicting or acquitting a person indicted of selony, what shall be done? If the jury convict a man, against or without evidence, and against the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury acquit him in like manner, the court may send them back again (and so in the former case) to consider better of it, before they record the verdict; but if they are peremptory in it, and stand to their verdict, the court must take their verdict and record it. 2 H. H. 309, 310.

#### A. Warrant for the returning lifts of jurors.

Westmorland. { To Henry Holme, gentleman, high constable of the West Ward, within the county aforesaid.

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These are to require you, upon sight hereof, to issue forth your precepts to all the petty constables within your said Ward, thereby directing and requiring them, to make and return true lists of jurors, according to the form, or to the effect here following; that is to say,

# West Ward. To the constable of ———

Y virtue of a warrant from his majesty's justices of the peace B in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to make a true list in writing, containing the names and places of abode, together with the titles and additions, of all persons, between the ages if 21 and 70, dwelling within your constablewick, qualified to serve upon juries; that is to fay, of every such person who bath in his own name, or in trust for him, within the county aforesaid, 10 l. a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of antient demesse, or in rents, or in all or any of them, in fee simple, fee tail, or for the life of himself, or some other per-Son; or having land in possession in his own right of 201. a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term determinable on one or more lives: In order to the making of which lift, you may, if you think it needful, apply to any parish officer, who shall have in his custody any of the rates for the poor or land tax, and from thence take the names of such persons so qualified. Which lift so being made as aforesaid, you

Henry Holme, High Constable.

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And this you the said high constable are in no wise to omit, upon the peril that shall ensue thereof. Given under our hands and seals the day and year first above written.

B. The form of a writ to the sheriff to summon jurors, for the trial of an issue joined.

EORGE the second &c. To the Sheriff of \_\_\_\_\_ greeting.

We command you, that you do not omit by reason of any liberty within your county, but that you enter therein, and cause to come before \_\_\_\_\_ twelve good and lawful men of the vicinage of \_\_\_\_\_ whereof every one hath such lands, tenements, or rents, as will qualify them to serve upon juries, and who are neither of affinity to \_\_\_\_\_ (the plaintiff) nor to \_\_\_\_\_ (the defendant); to hear and do those things, which on our behalf shall be then and there enjoined them: And have you then there this precept. Witness A. B. and C. D. at \_\_\_\_\_ the \_\_\_\_ day of \_\_\_\_\_ 4 & 5 W.

c. 24. f. 15.

Note; The general precept for summoning jurors to the sessions, is contained in the precept for summoning the sessions, in the title Sessions.

C. Challenge to the array, because the sheriff is of kindred to one of the parties; from Coke's entries.

A ND now at this day, to wit—came the aforesaid A. the plaintiff, and B. the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the oforesaid B. challengeth the array of the panel aforesaid, because be said that that panel was arrayed by one John Zouch, knight, now and at the time of making the array aforesaid, sheriff of the said county of Derby, which said sheriff is a kinsman of the aforesaid John Maners (the plaintiff); to wit, the son of George Zouch, esquire, the son of John Zouch, knight, the son of John Zouch.

Zouch, equire, the son of William Lord Zouch, the son of Alan Lord Zouch, the son of William Lord Zouch, the son of Elizabeth daughter of William Lord Roos, the father of William Lord Roos, the father of Eleanor mother of George Maners, knight, the father of Thomas Earl of Rutland, the father of the aforesaid John Maners. And this he is ready to werify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by \_\_\_\_\_ and by \_\_\_\_ triers, to this chosen and sworn, is found true. And therefore let the panel aforesaid be quashed and amoved &c. Tr. per p. 160.

Challenge because the panel was returned at the inftance of the party.

And upon this, the faid—challanges the array of the faid panel, because he says, that that panel was arrayed by one J.S. esquire, late sheriff of the county of—aforesaid, at the nomination of the said—and in his sawour; which said challenge, by triers thereof sworn, is sound true.

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For other forms of challenges, and proceedings thereupon, see Tr. per pais 159-184.

Jufffiable homicive. See Homicive.

# Justices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be justices within certain limits, for the confervation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. Dalt. c. 2.

And a record or memorial made by a justice of the peace, of things done before him judicially in the execution of his office, shall be of such credit, that it shall not be gainsaid. One man may affirm a thing, and another man may deny it; but if a record once say the word, no man shall be received to aver or speak against it; for if men should be admitted to deny the same, there would never be any end of controversies. And therefore to avoid all contention, while one saith one thing, and another saith another thing, the law reposeth it self wholly and solely in the report of the judge. And hereof it cometh, that he cannot make a substitute or deputy in his office, seeing that he may not put over the considence that is put in him. Great cause therefore have the justices to take heed that they abuse not this credit; either to the oppressing of the subject by making an untrue record, or the defrauding of the king by suppressing the record that is true and lawful. Lamb. 63—66.

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Hereof

# Justices of the peace.

Hereof also it cometh, that if a justice of the peace certify to the king's bench, that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. Dalt. c. 70.

And that I may treat intelligibly concerning this office (of which Lord Coke fays the whole christian world hath not the like, if it

be duly executed, 4 loft. 170.) I will fet forth

- I. The office of conservators of the peace at the common law, before the institution of justices of the peace.
- II. The commission of the justices of the peace, founded on the statute law.
- III. The justice of the peace his oath of office.
- IV. Of fees to be taken by justices of the peace.
- V. Some general directions relating to justices of the peace, not falling under any particular title of this book.
- VI. Their indemnity and protection by the law, in the right execution of their office; and their punishment for the omission of it.
- I. The office of conservators of the peace at the common law, before the institution of justices of the peace.

Confervators by

1. Of ancient time such officers or ministers, as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county; and they had a great interest in the just and due exercises of their feveral places, were by force of the king's writ in every feweral county chosen in full or open county by the freeholders of that county: as before the institution of justices of the peace, there were conservators of the peace in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the antient common law, were by force of the king's writ chosen by the freeholders in the county court, out of the principal men of the county; after which election so made, and returned, then in that case the king directed a writ to the party so elected, to take upon him and execute the office, until the king should order otherwise. And thus the coroners still continue to be chosen in full county; as also the knights of the shire for the the parliament. 2 Inft. 558, 559.

Confervators by

2. Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices: as for instance;

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(1) The lord chancellor, and every justice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the furety of the peace, and to take recognizances for it. 2 Haw. 32.

(2) Also, every court of secord, as such, hath power to keep

the peace within its own precinct. 2 Haw. 32.

(3) Also, every justice of the peace is a conservator of the peace. Crom. 6.

(4) Also, every sheriff is a principal conservator of the peace, and may without doubt ex officio award process of the peace, and take surety for it. And it seems the better opinion, that the security so taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation.

2 Haw. 33.

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(5) Also, every coroner is another principal conservator of the peace, and may certainly bind any person to the peace, who makes an affray in his presence. But it seems the better opinion, that he has no authority to grant process for the peace; and it seems clear, that the security taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in such court) is not to be looked on as a recognizance, but as an obligation. 2 Haw. 33.

(6) Also, every high and petit constable are by the common law

conservators of the peace. 2 Hazv. 33.

And it is faid, that if a constable see persons engaged in an affray, or upon the very point of entring upon it, as where one shall threaten to kill, wound, or beat another, he may imprison the offender of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find surety of the peace by obligation. 1 Haw. 137.

But it is faid, that a constable hath no power to arrest a man for an affray done out of his own view; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor doth it follow from his having power to compel those to find sureties who break the peace in his presence, that he hath the same power over those who break it in his absence.

1 Haw. 137.

3. There were also other conservators of the peace by tenure; Conservators by who held lands of the king by this service, among others, of being tenure. conservators of the peace within such a district. 2 Hazv 33.

4. Also there were other conservators of the peace by prescrip. Conservators by tion; who claimed such power from an immemorial usage in them-prescription. selves and their predecessors or ancestors, or those whose estate they had in certain lands, which wholly depended upon such usage, both as to its extent, and the manner in which it was to be exercised. 2 Haw. 23.

Thus it is faid, that a mayor of a corporation may be a confer-

vator of the peace by prescription. Crom. 6.

It is questioned indeed by some, whether any such power can be claimed by usage; yet if the power of holding pleas and even of courts of record, which are of so high a nature, and imply a

power

power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may; it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. 2 Haw. 34.

Power of confervators. 5. The authority which such conservators of the peace, whether by election, or tenure, or prescription, have at common law, is the same authority which constables of a vill or wapentake have at this day. Crom. 6. 2 Haw. 34.

Their duty.

6. The general duty of the conservators of the peace by the common law, is to employ their own, and to command the help of others, to arrest and pacify all such who in their presence and within their jurisdiction and limits, by word or deed, shall go about to break the peace. Dalt. c. 1.

And if a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and

fined. Dalt. c. 1.

And if the conservators of the peace have committed or bound over any offenders, they are then to send to, or be present at, the next sessions of the peace, or gaol delivery, there to object against them. Dalt. c. 1.

#### II. Of the commission of justices of the peace.

Justices of the peace at this day are of three forts; 1. By act of parliament; as the bishop of Ely and his successors, and the archbishop of York, and bishop of Durham, 27 H. 8. c. 4. 2. By charter, or grant made by the king under the great seal; as mayors and the chief officers in divers corporate towns. 3. By commission.

At the first, by the statute of the 1 Ed. 3. which is the first statute that ordains the assignment of justices of the peace by the king's commission, those justices had no other power but only to keep the peace. But the very next year, the form of the commission was enlarged, and continued still further to be inlarged both in that king's reign, and in the reign of almost every other succeeding prince, until the 30th year of the reign of Q. Elizabeth, when by the number of the statutes particularly given in charge therein to the justices, many of which nevertheless had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the mifwriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed. Which imperfections being made known to Sir Chr. Wrey, then Lord Ch. Justice of the king's bench, he communicated the same with the other judges and barous, so as by a general conference had amongst them, the commission was carefully refined in the Michaelmas term 1590, and being then also presented to the lord chancellor, he accepted thereof, and commanded the same to be used: Which continues with very little alteration to this day. Lamb. c. 9.

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George the second by the grace of god, of Great Britain, France, and Ireland, king, defender of the faith, and so forth. To A. B.

C. D. &c. greeting.

Know ye that we have offigned you, jointly and severally, and every one of you, our justices to keep our peace in our county of W. And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our faid county (as well within liberties as without) according to the force, form, and effect of the same; And to chastise and punish all persons that offend against the form of those ordinances or flatutes, or any one of them, in the aforefaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such

security to cause to be safely kept.

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, inchantments, sorceries, art magick, trespasses, forestallings, regratings, ingrossings, and extortions what soever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, by whomsoever and ofter what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; And also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lay in wait, to maim or cut or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them therefore made for the common benefit of England and our people thereof, have offended or attempted, or hereater shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, slewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premisses, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; And of all and fingular articles, and circumstances, and all other things what soever, that concern the premisses or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments what soever

fo before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you bereaster shall happen to be indicted; until they can be taken, surrender themselves, or be outlawed: And to bear and determine all and singular the felonies, poisonings, inchantments, sorceries, arts magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premisses, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done; And the same offenders, and every of them for their offences, by sines, ransoms, amerciaments, sorseitures, and other means as according to the law and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

Provided always, that if a case of difficulty, upon the determination of any the premisses, before you, or any two or more of you, shall happen to arise; then let judgment in no wise be given thereon, before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed

to hold the affizes in the aforesaid county.

And therefore we command you and every of you, that to keeping the peace, ordinances, flatutes, and all and singular other the premisses, you diligently apply your selves; and that at certain days and places, which you, or any such two or more of you as is aforesaid shall appoint for these purposes, into the premisses ye make inquiries; and all and singular the premisses bear and determine, and person and sulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England: Saving to us the amercements, and other things to us therefrom belonging.

And we command by the tenor of these presents our sheriff of W. that at certain days and places, which you, or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberius as without) by whom the truth of the matter in the premisses shall

be the better known and inquired into.

Lastly, we have offigned you the aforesaid A. B. keeper of the rolls of our peace in our said county. And therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

In witness whereof we have caused these our letters to be made

patent. Witness our felf at Westminster &c.

George the fecond &c.] This manner of issuing the commission in the king's name, feems to be founded on the statute of the 27 H. 8. c. 24. which enacts, that all justices of the peace shall be made by letters patents under the king's great seal, in the

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name and by authority of the king; but referves to all cities and towns corporate which have justices, the liberties which they have enjoyed in that behalf.

To A. P. C. D. &c. greeting] From the persons here named in the commission, it may be proper to consider, who may, or may not, be justices of the peace.

By the statutes of 13 R. 2. c. 7. and 2 H. 5. st. 2. c. 1. The justices shall be made within the counties of the most sufficient

knights, esquires, and gentlemen of the law.

And by the 18 G. 2. c. 20. it is enacted as follows: viz. No person shall be capable of being or acting as a justice of the peace, who shall not have in law or equity, for his own use, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years, or more, in lands, tenements, or hereditaments, in England or Wales, of the clear yearly value of 100 l. above what will discharge all incumbrances affecting the same, and all rents and charges payable out of the same; or who shall not be intitled to the immediate reversion or remainder of lands leased for one, two, or three lives, or for any term of years determinable on the death of one, two or three lives, upon reserved rents of the clear yearly value of 300 l.

And who shall not before he acts, at the fessions of the county where he intends to act, take and subscribe the oath following; I A. B. do swear, that I truly and bona fide have such an estate, in law or equity, to and for my own use and benefit, confisting of - (specifying the nature of such estate, whether messuage, land, rent, tythe, office, benefice, or what else) as doth qualify me to act as a justice of the peace for the county, riding, or division of -, according to the true intent and meaning of an act of parliament made in the 18th year of the reign of his majesty king George the second, intitled, An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign, intitled, An act for the further qualification of justices of the peace; and that the same (except where it consists of an office, benefice, or ecclefiastical preferment, which it shall be sufficient to ascertain by their known and usual names) is lying or being, or issuing out of lands, tenements, or hereditaments, being within the parish, townfrip, or precinct of \_\_\_\_\_, or in the server or precincts of \_\_\_\_\_, in the county of \_\_\_\_\_ counties of \_\_\_\_\_ (as the case may be.) -, or in the several parishes, townships, -, or in the several

Which oath taken and subscribed, shall be kept by the clerk of

the peace among the records of the fessions.

And the clerk of the peace shall on demand forthwith deliver an attested copy to any person paying 2 s. for the same; which being proved to be a true copy of such oath, shall be admitted in evidence on any issue in an action brought on this act.

And if any person shall act as justice, without having taken and subscribed the said oath, or without being qualified as above, he shall for every offence forseit 100 /. half to the poor of the

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parish in which he most usually resides, and half to him who shall sue, with full costs. The prosecution to be in fix months.

And in such action, the proof of the qualification shall lie on

the person against whom it is brought.

And if the defendant intends to infift on any lands not contained in such oath, he shall at or before the time of pleading deliver to the plaintiff or his attorney a notice in writing specifying such lands, and the parish and county where they are situate (offices and benefices excepted, which it shall be sufficient to ascertain by their usual names:) And if the plaintiff in such suit shall think sit thereon not to proceed further, he may with leave of the court discontinue such suit, on payment of costs to the defendant as the court shall award.

And upon trial no estate, but what is contained in the oath and

notice, shall be admitted as any part of the qualification.

And if the plaintiff or informer shall discontinue (otherwise than as aforesaid) or be nonsuit, or judgment be given against

him, he shall pay treble costs.

But this shall not extend to any city, town, or liberty, having justices of their own; nor to any peer, lord of the privy council, judge, attorney or solicitor general, or to the justices of the great sessions for Chespire and Wales, or to the eldest son or heir apparent of a peer, or of any person qualified to serve as knight of a shire:

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under fecretaries in each of the offices of the principal fecretary of state, or the fecretary of Chelfea college, in their respective liberties; nor to the heads of colleges or halls, or vicechancellor, of either of the universities, or to the mayors of Oxford or Cambridge.

By the 1 M. feff. 2. c. 8. No sheriff shall exercise the office of a justice of the peace, during the time that he acts as sheriff. And the reason seems to be, because he cannot act at the same time both as judge and officer, for so he would command himself

to execute his own precepts. Dalt c. 3.

Also if he be made a coroner, this by some opinions is a dif-

charge of his authority of justice. Dalt. c. 3.

But if he be created duke, archbishop, marquis, earl, viscount, baron, bishop, knight, judge, or serjeant at law, this taketh not away his authority of a justice of the peace. I Ed. 6. c. 7. Dalt. c. 3.

Also, no attorney, solicitor, or proctor, shall be a justice of the peace, during the time he shall continue in the practice of

that bufiness. 5 G. 2. c. 18. f. 2.

By Holt Ch J. Tho' a man be a mayor, it doth not follow that he is a justice of the peace, for that must be by a particular grant in the charter. L. Raym. 1030. But altho' he be not a justice of the peace by the charter, yet there are many cases, wherein he hath the same power as a justice of the peace given unto him by particular statutes; as for instance, with regard to the customs, alchouses, lord's day, swearing, gaming, weights, servants, such leather, orchards, soldiers, and divers others.

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Know ye that we have assigned you This is sounded on the statute of the 1 Ed. 3. c. 16. viz. For the better keeping and maintenance of the peace, the king will, that in every county good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the peace.

And from this act we are to date that great alteration in our conflitution, whereby the election of confervators of the peace was taken from the people, and translated to the affigument of the

king. Lamb. 20.

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And here we may observe, that the commission hath two parts; or consistent of two different Assignments: By this first assignment, any one or more justices have as well all the ancient power touching the peace, which the conservators of the peace had at the common law, as also that whole authority which the statutes have since added thereto. Dalt. c. 5.

Jointly and severally, and every one of you] Whatsoever any one justice alone may do, the same also may lawfully be done by any two or more justices; but where the law giveth authority to two, there one alone cannot execute it. Dalt. c. 6.

And yet where a statute appointeth a thing to be done by two justices or more, if the offence be any misdemeanor or matter against the peace, there upon complaint made of the offence, to any one of those justices, it seemeth that one of them may grant out his warrant to attach the offender, and to bring him before the same justice and the other justice so appointed (at some convenient place), and then they to hear and determine the same. Dalt. c. 6.

But it feemeth, that when a thing is appointed by any statute to be done by or before one person certain, such thing cannot be done by or before any other: and by such express designation of one, all others are excluded, and their proceedings therein are coram non judice. Dalt. c. 6.

Our justices] In that the king calls them our justices, their authority determines of course by his death or demise; so that he being once dead, or having given over his crown, they are no more his justices; and the justices of the next prince they cannot be, unless it shall please him afterwards so to make them. Dalt.

But by the 1 An. st. 1. c. 8. st. 2. No patent or grant of any office or employment shall determine by the king's death or demile, but shall continue in force for fix months after, unless in the

mean time made void by the fuccessor.

Also, before his death or demise, the king may determine the commission at his pleasure; and that either expressed, as by writ under the great seal, or by implication, by making a new commission, and leaving out the former justices names. But until notice, or publishing of the new commission, the acts of the former justices are good in law. Dalt. c. 3.

But to mayors, and chief officers in corporations, which have the authority of justices of the peace, or of conservators of the

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peace, by grant under the king's letters patent to them and their fucceffors the authority remaineth, notwithstanding the king's death or demise. Dalt. c. 3.

Neither can the king discharge these again at his pleasure; but yet such grants and charters may for some great and general defect, or miscarriage, in the execution of the powers therein granted, be repealed, and the liberties seized. Dalt. c. 3.

Justices to keep our peace] Altho' they are in no part of the commission called keepers of the peace, yet inasmuch as by the 18 Ed. 3. c 2. they are expresly called keepers of the peace, and the principal end of their office is for the keeping of the peace, and their usual description in certioraries is by the name of keepers of the peace; it hath been adjudged, that in the caption of an indistinent, keepers of the peace and justices of our lord the king, is good, without expresly naming them justices of the peace. 2 Haw. 38.

To keep our peace] These words seem to give them the authority which the conservators of the peace had at common law; and all that follows in the commission, seems an addition to the power of the ancient conservators.

Our peace] It hath been resolved, that the description of justices of the peace, by the name of justices of our lord the king to keep the peace, is good, without saying, the peace of our lord the king; for that is necessarily implied. 2 Haw. 38.

Also, by these words our peace, when the king dies, the surety of the peace is discharged; for when he is dead, it is not his peace. Crom. 124.

In our county of W.] Here are two confiderations; One is, that the justice cannot act when he is out of the county; And the other is, that when he is in the county, he can act for that county only, and his power extendeth to no other. But both these are to be understood with some limitations.

As to the former case, when he is out of the county; It is said, that the justices have no coercive power when out of the county; and therefore that an order of bastardy, or for payment of labourers wages, made by them out of the county, is not binding. Yet it is said, that recognizances and informations voluntarily taken before them in any place, are good. 2 Haw. 37.

And L. Hale fays, that a justice of the peace may do a ministerial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulsory act, as committing a person for not giving recognizance. 2 H. H. 50, 51.

Also, by the 9 G. c. 7. Justices dwelling in a city or precind that is a county of it self, within the county at large, may act at his own dwelling house for such county at large.

And as to the latter case, wherein it is supposed that his power is limited unto that county only,—it is enacted by the 24 G. 2. c. 55. that if any person against whom a legal warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction

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jurisdiction of the justice granting the warrant, either before or after the iffuing thereof; any justice for the county or place, where fuch person shall so escape or be, upon proof on oath, of the hand writing of the justice granting such warrant, shall indorse his name thereon; which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same in such other county or place, and to carry the offender before the justice who indorsed the warrant, or some other justice of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next affizes of fessions for the county or place where the offence was committed; and fuch justice shall take bail accordingly, and shall deliver the recognizance, together with the examination or confession of the offender, and all other proceedings relating thereto, to the constable or other person, who shall (on pain of 10 l. to him who shall sue) deliver over the same to the clerk of affize, or clerk of the peace, where the offender is required to appear. And if the offence is not bailable, or he shall not give bail to the satisfaction of the justice before whom he is brought, the constable or other person shall carry the offender before a justice of the proper county or place, where the offence was committed, there to be dealt with according to law.

And to keep and cause to be kept all ordinances and statutes for the good of the peace ] It feems certain, that by virtue hereof, they may execute all statutes whatsoever, made for the better keeping of the peace, and confequently those of Winchester and Westminfler, and all others concerning the peace, made before the reign of Ed. 3. in whose time (as hath been said) justices of the peace were first instituted; for all those statutes were expresly mentioned in the ancient commissions of the peace, and have always been undoubtedly taken to be included in these general words of the present commission. And yet none of the statutes which ordain the office of justices of the peace, fay any thing concerning the execution of the faid former statutes; so that the power of justices of the peace in relation to those statutes seems entirely to depend on the king's commission, and yet hath always been unquestionably allowed. From whence it appears, that regularly the king, by his commission, may authorize whom he pleases to execute an act of parliament. 2 Haw. 37.

But if no power be expresly given in any such statute to any one justice alone, he cannot proceed upon it, but he may preser the cause at the sessions, and work it to a presentment upon the

But besides the statutes relating to the peace, there are also many other statutes which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace, by the express words of such statutes; and all such statutes are to them a sufficient warrant and commission of themselves, altho, they be not recited in the commission, and are to be executed by them, according as the same statutes themselves do severally prescribe and set down. Dalt. c. 5.

Voz. II. G Statutes

Statutes for the good of the peace] Altho' a præmunire is not within the letter of the commission, yet inasmuch as it is against the peace of the king and of the realm, any justice may cause a person to be apprehended for such offence, and take his examination, and informations against him, and certify the same to the king's bench or gaol delivery. 2 Haw. 39. And the same may be said of other like offences.

And for the quiet government of our people] Of our people;—yet it feemeth, that the subjects of a foreign prince coming into England, and living under the protection of our king, shall be subject to, and have the benefit of the laws, in respect of the local allegiance which they owe to him. 2 Haw. 35. 1 H. H. 93, 94.

As well within liberties as without] By these words shall be intended such liberties and franchises which have return of writs, and not such as are counties of themselves, as London, Norwich,

York, and fuch like. Crom. 8.

But yet from hence it feems clearly to follow, that they may execute their office within a town (not being a county of it felf) altho' it have a special commission of the peace for its own limits, unless such commission have a clause, that no other justices except those named in it, shall any way concern themselves in the keeping of the peace within the liberties of fuch town; And it may be questioned, whether such a special clause in such a commission do absolutely make void the act of any county justice within such town; fince the commission for the county seems as fully to give those named in it a jurisdiction over all such towns within the precinct of it, as such commission for a town doth exclude them. And the justices for the county seem to be under no necessity of informing themselves of the contents of a commission, which they have nothing to do with. Yet if they have express notice given them of fuch a restraining clause, and proceed to act within such town in defiance of it, they may perhaps be punishable for their contempt of the king's prohibition; and yet perhaps it may be questioned whether their acts be void, for the reasons abovemen-2 Haw. 37.

And Lord Hale treating on the same subject, says, if the king by charter grant to a corporation, that the mayor, and recorder, or other, shall be justices within the same; yet if there be no words of exclusion, the justices of the county have a concurrent jurisdiction: But if this franchise of being justices be granted, so that the justices of the county shall not intermeddle (se non intromittant); then tho' a subsequent commission be granted in the county at large, it seems they have no jurisdiction in this corporation or town: yet it is questionable, whether an indictment in the franchise be void, or only a contempt in the justices. 2 H. H. 47.

But in the case of Talbot and Hubble, T. 14G. 2. The question was, whether as the city of New Sarum had an exclusive commission of the peace, the justices of the county of Wilts could by virtue of the 12C. 2. c. 23. & 15 C. 2. c. 2. act in excise matters

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matters within the city. This case was argued three times at the bar, and this term Lee Ch. J. delivered the resolution of the court:

1. That the crown might grant to any city, to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace.

2. That in such case, the act of the county justices would be void, and not to be considered only as a breach of the franchise.

3. That though the 12 C. 2. gives the jurisdiction in excise matters to the justices of the peace residing near the place where the forseiture shall be made, or offence committed; yet it never was the design of the legislature, to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction in justices of counties, cities, and places, with respect to their several local jurisdictions within such places. Str. 1154.

Concerning their bodies] Lambard and Dalton both think it feems clear, that if a man is in fear that another will hurt his ferwants, or cattle, or other goods, the furety of the peace shall not be granted; but Mr. Dalton is of opinion, that if one threatens to hurt a man's wife, or child, he may crave the peace by virtue of these words. Lamb. 82. Dalt. c. 116.

Have used threats] It should seem from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of words only, but of threatning actions likewise, or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided. Crom. 125.

For the peace or their good behaviour] Lord Hale, speaking of the statute of the 34 Ed. 3. c. 1. (on which Mr. Crompton says the power of justices to bind to the good behaviour is grounded) says, that this power of binding, tho' expressed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, viz. to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 H. H. 136.

In our prisons] The king's prison is the common gaol of the county: But by the statute of the 6 G. c. 19. the justices may commit vagrants and other criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties.

We have also assigned you, and every two or more of you] Here beginneth the second part of the commission, or the second assignment: All the business within which assignment belongeth to the sessions of the peace. Dalt. c. 5.

And by this it appeareth, that two justices may hold a sessions, but that one justice cannot. Crom. 6, 7.

Of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one This clause, which gives power to two or more justices to hear and determine offences, requires that at least one of those justices be of that select number, which is commonly termed of the Quorum (from that word in the Latin commissions, Quorumunum esse volumus.) For those of the quorum were wont to be chosen specially for their knowledge in the laws: And this was it which led the makers of feveral ancient statutes expresly to enact, that fome learned in the laws should be put into the commission of the peace; and (to fay the truth) all statutes that require the prefence of the quorum, do fecretly fignify fuch a learned Man. For albeit that a discreet person (not conversant in the study of the laws) may fufficiently follow fundry particular directions concerning this fervice of the peace; yet when the proceeding must be by way of presentment or indictment, upon the evidence of witnesses, and oaths of jurors, and by the order of hearing and determining, according to the streight rule and course of the law, it must be confessed that learning in the laws is very necessary. Lamb. 48, 49.

But learning being now greatly advanced and improved fince the first institution of this office, this distinction is not usually made in the commissions of late years, but all the justices are equally assigned to be of the quorum; and by the statute of 26 G. 2. c. 27. no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the quorum (altho' the flatutes respectively do require it) shall be impeached,

fet aside, or vacated, for that defect only.

By the oath of good and lawful men That is, by a jury fworn.

Of all and all manner of felonies That is, either by the common law, or by statute. Crom. 8.

Felonies Tho' the commission doth not mention murders and manslaughters, by express name, but only felonies generally, yet by these general words they have power to hear and determine murder and manslaughter, and also may take an indictment of se defendendo, contrary to the opinions of Fitzherbert and Stamford. But tho' the juffices have this power, yet they do not ordinarily proceed to hear and determine these offences, and rarely other of fences without clergy, both because of the monition and clause in their commission, in cases of difficulty to expect the presence of the justices of affize; and also because of the direction of the flature of the 1 & 2 P. & M. c. 13. which directs justices of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing; and then to bail the prisoner, if there be cause, and to certify the same with the bail at the next gaol delivery; And therefore in cases of great moment, they bind over the profecutors, and bail the party if bailable, to the next gad delivery. But in smaller matters, as petit larceny, and some cales

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cases within clergy, they bind over to the sessions; but this is only in point of discretion and convenience, not because they have not jurisdiction of the crime. 2 H. H. 46.

So also, an inquisition of felf murder, if the body cannot be seen, and so not inquired of by the coroner, may be taken before justices of the peace; for it is a felony, and within the extent of their commission. 1 H. H. 414.

So also, if a person hath committed treason, tho' the justices have no cognizance of it as treason, yet they have cognizance of it as a selony, and as a breach of the peace; and therefore a justice of the peace, upon information on oath, may issue his warrant to take the traytor, and may take his examination, and commit him to prison. I. H. H. 580.

Poisonings] The word in the latin commissions was veneficia; and before the statute of the 9 G. 2. c. 5. which abolisheth witchcraft, was in the English translations rendred witchcrafts.

Inchantments, forceries, arts magick] These also are abolished by the said statute, which enacts, that no prosecution shall thereafter be commenced against any person, for witchcrast, forcery, inchantment, or conjuration.

And from the words continuing in the commission, when the crime itself is abolished, we may observe the averseness in the superior courts from altering ancient forms.

Trespasses] This is founded on the statute of the 34 Ed. 3. c. 1. which enacts, that the justices assigned shall have power to restrain the offenders, rioters, and all other barators, and to chassise them according to their trespass or offence.

And upon this Mr. Hawkins observes, that the word trespass is of a very general extent, and in a large fense not only comprehends all inferior offences, which are properly and directly against the peace, as affaults and batteries, and fuch like, but also all others which are fo only by construction; as all breaches of the law in general are faid to be. Yet it hath been of late fettled, that justices of the peace have no jurisdiction over forgery or perjury at the common law; the principal reason of which resolution, he fays, as he apprehended was, that inasmuch as the chief end of the inflitution of the office of these justices was, for the preservation of the peace against personal wrongs, and open violence; and the word trespass in its most proper and natural sense, is taken for fach kind of injuries, it shall be understood in that sense only in the faid statute and commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 Haw. 40.

The word for trespasses in the old latin commissions, is transgressiones.

Forestallings, regratings, ingrossings] Over these offences the justices in sessions have a jurisdiction given to them, by the statute of the 5 & 6 Ed. 6. c. 14.

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Extortions] The intent of this word is, to inquire of those who have done excessive wrongs; for wrong done by any one is properly trespass, but excessive wrong done by any one is called extortion; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever (as well spiritual as temporal) who by colour of their office have done great oppression and excessive wrong to the king's subjects, in taking excessive

rewards or fees for doing their offices. Crom. 8.

The justices have no express power given them over this offence by any statute; upon which Mr. Hawkins observes, that justices of the peace have jurisdiction of all inserior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly, or at least by consequence and judgment of law, against the peace: And upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of extortion, a Haw. 40.

And of all and fingular other crimes and offences of which the justices of our peace may or ought lawfully to inquire] Which general words feem to include the vast number of offences over which they have a jurisdiction given them by many statutes, and which are not particularly mentioned in the commission.

And also of all those who in companies against our peace in disturbance of our people with aimed force have gone or rode] By these words they are to inquire of riots, routs, and all unlawful assemblies. Crom. 8.

Weights or measures] This clause was first established by the 34 Ed. 3. c. 5. And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences.

Selling victuals] Over this they have a jurisdiction given them, by the 2 & 3 Ed. 6. c. 15. intitled, The bill of conspiracies of victuallers and craftsmen.

And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves. This clause is as ancient as the 4 Ed. 3. c. 2. on which it is founded.

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall either of contempt or negligence, do that which is amiss. Lamb. 49.

And to inspet all inditiments so before you taken] But they cannot proceed upon indictments taken before coroners, or justices of over and terminer or gaol delivery; but on indictments taken before the sheriff in his turn they may proceed. Hale's Pl. 168.

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Or before other late our justices] This is founded on the statute 11 H. 6. c. 6. which enacts, that no indictment, plea, suit, or process shall be discontinued by a new commission; but the justices in the new commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally to determine the same, as the former justices might have done.

And to make and continue processes This is by wenive, distringus, capias, or exigent, as the case shall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the justice; but the process issues after indictment, and must be in the name of the king only. Dalt. c. 193.

Until they can be taken, furrender themselves, or be outlawed] For the process is sent out to this end, that either the party shall come in, to answer, and to be justified by the law; or else that he shall for his contumacy be deprived of the benefit of the law. Lamb. 521.

Or be outlawed] It is observable that the power of the justices stops here, and goes no further; so that they cannot make out a capias utlagatum, but the outlawry must be certified into the king's bench. Lamb. 521. 2 H. H. 52.

But by the 12 Co. 103. they that have power to award process of outlawry, have also a power to award a capias utlagatum, as incident to their authority and jurisdiction.

Hear and determine] This power was first given to them by the statute of the 18 Ed. 3, st. 2. c. 2. and afterwards confirmed and enlarged by divers other statutes.

Yet this clause doth not in propriety make the justices of the peace justices of over and terminer, because that is a distinct commission; and therefore a statute limiting an offence to be heard and determined before justices of over and terminer, gives not the power therein to justices of the peace. Hale's Pl. 165.

And thereupon it is faid, that altho' they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof by proclamation (as justices of gaol delivery may) until an inquisition taken; but if an inquisition be taken, and an ignoramus found, they may deliver him as it seemeth. 2 H. H. 46,

Likewise, altho' commissioners of over and terminer may indict and try at the same sessions, yet it hath been ruled otherwise in case of justices of the peace, unless by consent; but certainly constant usage and learned opinion must give that exposition upon those resolutions, that it must extend only to popular actions or indictments for misdemeanors, and not in cases of selony. 2 H. H. 48.

By fines, ranfoms, amerciaments, forfeitures, and other means to chaftife and punish] Hereby the justices are now armed with far more ample authority and power, than the ancient conservators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the

cause,

cause, nor to punish except in some few cases as mentioned before. Dalt. c. 6.

But the justices may not award any recompence to the party

wronged, otherwise than by persuasion. Dalt. c. 5.

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word determine), but for the plainer declaration of the justices power, and for the more assured terrifying of offenders. Lamb. 49.

If a case of difficulty shall happen to arise] That is, a difficulty in point of law. Crom. 6.

Then let judgment in no wise be given] But yet if they list to proceed without the judge's advice, their judgment is not void; but it standeth good and effectual, until it be reversed by a writ of error. Lamb. 50.

At certain days and places That is, when they hold their feffions; which they are impowered and required to do, by several

Lastly, we have assigned you the aforesaid A. B. keeper of the rolls] 'This is in pursuance of the statute of the 37 H. 8. c. 1. which enacts, that the lord chancellor shall by commission assign such person to be custos rotulorum as the king shall by writing under his hand appoint.

#### III. The justice of the peace his oath of office.

On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of dedimus potestatem directed out of chancery, to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed; and to certify the same into that court, at such a day as the writ commandeth. Lamb. 53.

The form of which oath at this day is as followeth:

Ye shall swear, that as justice of the peace in the county of W. in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, ofter your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entred without any concealment (or imbeziling) and truly fend them to the king's exchequer. Ye shall not let, for gift or other cause, but well and truly ye shall do your office of juflice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and f.es accustomed, and costs limited by stetute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiffs of the faid county, or other the king's officers or ministers, or other indifferent persons, to do execution spereof. So bely you gad.

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This oath feems to be founded on the statute of the 13 R. z. c. 7. which enacts, that the justices shall be sworn, duly and without favour, to keep and put in execution all the statutes and ordinances touching their offices.

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Besides this oath of office, he is likewise to take the oath mentioned in the last section concerning his qualification by estate; and he must, within six months after, take also the oaths of allegiance, supremacy, and abjuration, and make and subscribe the declaration against transubstantiation, at the sessions, as other persons admitted to offices.

#### IV. Of fees to be taken by justices of the peace.

In the oath of office abovementioned are these words; And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.

And by flatute their fees in many cases are limited and ascertained; as is noted under the respective titles where they fall in throughout this book.

And for the rest it is provided generally by the statute of the

That the justices at Midsummer sessions 1753, shall settle a table of their clerks sees; which being approved by the justices at the next succeeding sessions, with such alterations as the justices there shall think proper, shall be laid before the judges at the next assizes, who shall confirm the same with such alterations, additions, or abatements, as to them shall appear just and reasonable: And the sessions from time to time may make any other table of sees, and after the same shall have been approved by the next succeeding sessions, shall lay the same before the judges at the next assizes, who may ratify the same in like manner: and no table of sees shall be valid, until confirmed by the judges.

And if after three months from the time that such table shall be confirmed, any justice's clerk shall demand or take any other or greater see than shall have been so confirmed, he shall forfeit 20 l. to him who shall sue in three months. f. 2, 4.

And the faid table of fees shall be deposited with the clerk of the peace, who shall cause true copies thereof to be kept constantly in a conspicuous part of the room where the sessions are held, on pain of 10 1. f. 3.

And by the 27 G. 2. c. 16. In Middlefex, the like table shall be confirmed, by the two lord chief justices, and the lord chief baron, or any two of them. f. 4.

- V. Some general directions relating to justices of the peace, not falling under any particular title of this book.
- 1. Regularly, justices of the peace ought not to execute their Justice being a office, in their own case; but cause the offenders to be convened party.

  Or carried before some other justice, or desire the aid of some other justice being present. Dalt. c. 173.

By

By Holt Ch. J. M. 10 W. The mayor of Hereford was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejestment, though he by the charter

was fole judge of the court. I Salk. 396.

H. 3 An. The case of Foxbam Tithing in the county of Wilts. A justice of the peace was surveyor of the highways, and a matter which concerned his office coming in question at the session, he joined in making the order, and his name was put in the caption. But by Holt Ch. J. It ought not to be; as if an action be brought by my lord chief justice Trever in the court of common pleas, it must be before Edward Nevill, knight, and his associates, and not before Thomas Trever, &c. And it was quashed. 2 Salk. 607.

And lord chief justice Raymond, who had an estate in the parish of Abbots Langley, went off the bench, when an order relating to

a pauper there came before the court. Str. 1173.

And yet if the justice shall deal in his own case, it seems in some cases justishable; as when a justice shall be assaulted, or (in the doing his office especially) shall be abused to his sace, and no other justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require: But if any other justice be present, it were sitting to desire his aid. Dalt. c. 173. Str. 420, 421.

And by the 16 G. z. c. 18. The justices may do all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance, and settlement of the poor; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding that they are rated, or chargeable with the rates within any place affected by such their acts. Provided, that this shall not impower any justice for any county at large, to act in the determination of any appeal to the quarter sessions of such county, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable.

And as it is unjust in many cases for the magistrate to act in his own cause, so it is also imprudent: To which purpose the advice of lord Coke is applicable, who upon the occasion of mentioning a certain judge, who made a settlement of his estate which was void in law, and brought an action in his own name, which all the other judges, of his own shewing in the count, were of opinion did not lie, makes this observation, that it is not safe for any man (be he never so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally more sooish in their own concerns, than in those of other people.

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2. If a justice exceed his authority, in granting a warrant, yet the officer must execute it, and is indemnified for so doing; but if it be in a case wherein he hath no jurisdiction, or in a mat-

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ter whereof he has no cognizance, the officer ought not to execute such warrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice. Cro. Car. 394. 10 Co. 76.

Thus if a justice send a warrant to a constable, to take up one for flander, or the like, the justice hath no jurisdiction in such cases, and the constable ought to refuse the execution of it.

Wood 138.

But by the 24 G. 2. c. 44. If the officer in fix days after demand shall grant to the party complaining a perusal and copy of the warrant, he shall not be liable to any action, but the justice

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3. T. 2 G. Pancras and Rumbald. There was an order of two Whether they justices for the removal of a poor person, from the parish of Pan- may supersede cras to Rumbald. Within three days, the justices, reciting that their own prothey were surprized, superseded it, and command the churchwardens to return the former order to be cancelled. It was infifted, that the justices could not issue such a supersedeas. court, The Supersedeas is well sent by the justices, and to prevent the charge of an appeal. And the last order was confirmed.

4. In summary convictions, the party ought to be heard, and To condemn no for that purpose ought to be summoned in fact; and if the justice man unheard, proceed against a person without summoning him, it would be a mildemeanor in him, for which an information would lie. I Salk. L. Raym. 1407. Str. 678.

But before an information is granted, the court will first require, that the conviction be removed before them. Str. 915.

E. 11 G. z. K. and Harwood. The defendant being a justice of the peace, was convicted on an information, for a conviction by him made of an alchoulekeeper, who was never fummoned or It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate the court resolved, it was not of course; and the defendant afterwards appeared in person. Str. 1088.

5. M. 9 G. K. against Todd and others. By the 6 G. c. 21. Refusing to prothe justices of the peace have a jurisdiction given them in some ceed in a cause cases to receive an information, and make their determination, depending before upon a feizure of brandy. Upon information exhibited by the officer of the customs, the fact appeared not to warrant the seizure; but the justice, in favour of the officer refused to dismiss the information, so as the owners might have their brandy again. And now a mandamus was moved for, to compel him to determine the matter; which was granted accordingly. Str. 530.

H. 7 G. K. against Newton and others. By the 1 G. c. 13. f. 11. it is enacted, that two justices may summon any person to take the oaths before them; and if they do not appear, then on oath of ferving fuch summons, the justices are to certify the same to the quarter fessions, where if the party so summoned doth not appear to take the oaths, he shall stand convicted of recusancy.

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The defendants were justices of the peace, and issued their sum: mons accordingly; but coming afterwards to understand, that the party was a gentleman of fashion, and not suspected to be against the government; lest a transaction of this nature should be an imputation upon him, they refused to give the profecutor his oath of the service of such summons, that the matter might go no further. And now upon motion against them for an information, the court declared, that the justices had no discretionary power to refuse to put the act in execution, and therefore granted an information against them. Str. 413.

Authority to apof their orders.

6. Where a special authority is given to justices out of sessions, pear on the face it ought to appear in their orders, that that authority was exactly pursued. 2 Salk. 475.

To make a record of their proceedings.

7. In all cases where justices may hear and determine out of fessions (viz. on their own view, or confession, or oath of witnesses) the justices ought to make a record in writing under their hands of all the matters and proofs; which record notwithstanding in many cases they may keep by them. Dalt. c. 115.

To effreat fines.

8. And if upon fuch conviction, the offender is to be fined to the king, then the juffices are to effreat fuch fine, and to fend the estreat into the exchequer, whereby the barons of the exchequer may cause the said fine or forseiture to be levied for the king's use. Dalt. c. 115.

Whether a juflice may iffue his warrant for offences cognizable only in the festions.

9. Lord Hale fays (contrary to the opinion of Lord Coke) that the justices out of fessions may issue their warrants for apprehending persons charged of crimes within the cognizance of the fessions, and bind them over to appear at the sessions, altho' the offender be not yet indicted. 1 H. H. 579.

But in another place he fays, this feemeth doubtful; and that one thing which feems to make against it is, that in most cases of this nature, tho' the party were indicted, or an information preferred, yet a capias was not the first process, but a venire facias,

and distringas. 2 H. H. 113.

And Mr. Hawkins on this point faith thus: It feems that anciently no one justice could legally make out a warrant for an offence against a penal statute, or other misdemeanor, cognizable only by a fessions of two or more justices; for that one single jaflice hath no jurisdiction of such offence, and regularly those only who have jurifciction over a cause can award process concerning it: Yet the long, conftant, univerfal and uncontrolled practice of justices of the peace, seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. 2 Haw. 84.

Not to truff to sbitracts and abridgments.

10. Forasmuch as most of the business of a justice of the peace, confisteth in the execution of divers statutes, which cannot be sufficiently abridged but that they will come short of the substance and body thereof; therefore it shall be safest for the justices to have an eye to the statutes at large, and thereby to take their further and better directions, for their whole proceedings: for (as Lord Coke observeth) abridgments are of good and necessary use to serve as tables, but not to ground any

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opinion, much less to proceed judicially upon them. Dalt.

to the care and judgment of their clerks, in drawing warrants and clerks and tranother instruments; much less, to the skill of parish officers in scribers. making copies of orders, and the like: but rather it is advisable to have good printed forms; and instead of copies to be taken upon occasion, to make out duplicates.

VI. Their indemnity and protection by the law in the right execution of their office; and their punishment for the omission of it.

1. A justice of the peace is strongly protected by the law, in His indemnity.

the just execution of his office.

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Thus, in the first place, he is not to be standered or abused; as appears by the following report: M. 11 G. Afton and Blagrave. The plaintiff declared, that he was a justice of the peace, and that upon a colloquium of him and the execution of his office, the defendant said, You are a rascal, a villain, and a lyar. After verdict for the plaintiff it was moved in arrest of judgment, that these words are not actionable. It was urged for the plaintiff; There is a great difference between magistrates and common tradesmen: words of the latter, must affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former, is actionable: And although an indictment might not lie for these words, as perhaps not tending to a breach of the peace, yet nevertheless they are actionable; for in many cases words are actionable, which are not indictable. After confideration, Pratt Ch. J. delivered the opinion of the court, That though rascal and willain were uncertain, yet being joined with lyar, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. Str. 617. L. Raym. 1369.

Afterwards, T. 15 G. 2. Kent and Pocock. These words spoken of a justice of the peace in the execution of his office, and relating thereto, were held actionable, viz. Mr. Kent is a rogue; according to the aforesaid case of Aston and Blagrave. Str.

1168.

E. 7 G. K. and Revel. The defendant was indicted, for faying of Sir Edward Lawrence a justice of the peace, in the execution of his office, You are a rogue and a lyar. It was moved, after verdict for the king, in arrest of judgment, that though the justice might have committed him for the contempt, yet the words are not indictable, fince it is not to be presumed they would provoke the justice to a breach of the peace, which is the reason why indictments have been held to lie for words. But by the court, The allowing he might be committed, shews they were indictable. It is true, the justice may make himself judge, and punish him immediately; but still, if he thinks proper to proceed less summa-

rily by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but where it is behind his back, the party can be only indicted for a breach of the peace. Judgment for the

king. Str. 420.

T. 14 G. 2. King and Pocock. An information was moved for against the defendant, on account of words spoken of Mr. Kent a justice of the peace. And the affidavit stated, that in a conversation about a warrant granted by Mr. Kent, the defendant asked, if Mr. Kent was a sworn justice; and being answered, to be sure he was, else he would not act, the defendant replied, If he is a fworn justice, he is a rogue and a forsworn rogue. To this it was objected, that the words were not spoken to him in the execution of his office, but only in relation to what he had formerly done: And by the court, There ought to be no information; it is not the same insult and contempt, as if spoken to him in the execution of his office, which would make it a matter indictable. Str. 1157.

Nevertheless, according to the distinction in the aforesaid case of Asson and Blagrave, although an information or indictment might not lie, yet it doth not follow but that the words were actionable; and so it seemeth to have been held in the case last but one abovementioned, of Kent and Pocock, which seemeth to have been none other than an action brought for this very same offence, after it had been determined that an information would not

lie.

In the next place; he is not punishable at the suit of the party, but only at the suit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an action for what he doth as judge: but in cases wherein he proceeds ministerially, rather than judicially, if he acts corruptly, he is liable to an action at the suit of the party, as well as to an information at the suit of the king. 2 Hazw. 85.

In the next place, by the 7  $\mathcal{F}$ . c. 5. it is enacted, that if any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and if he recovers, he shall have dou-

ble costs.

And by the 21 J. c. 12. such action shall not be laid, but in

the county where the fact was committed.

And moreover, by the 24 G. 2. c. 44. it is enacted, that no writ shall be sued out against, or copy of any process at the suit of a subject shall be served on any justice, for any thing done by him in the execution of his office; until notice in writing shall have been given to him, or left at his usual place of abode, by the attorney for the party, one month before the suing out, or serving the same; containing the cause of action, and indorsed with his name and place of abode; for which he shall be intitled to a see of 201, and no more. s. 1.

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And unless it is proved upon the trial, that such notice was

given, the justice shall have a verdict and costs. f. 3.

And the justice may at any time, within one month after such notice, tender amends to the party complaining, or to his attorney; and if the same is not accepted, he may plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon issue joined, the jury shall find the amends tendred to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be nonsuit, or discontinue, or if judgment be given for the defendant upon demurrer, the justice shall be intitled to the like costs, as if he had pleaded the general issue only: And if the jury shall find that no amends, or not sufficient, were tendred, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover with costs. f. 2.

And if the justice shall neglect to tender amends, or shall have tendred infufficient, before the action brought, he may by leave of the court before issue joined, pay into court such sum as he shall fee fit; whereupon fuch proceedings and judgment shall be had, as in other actions where the defendant is allowed to pay money into

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And no evidence shall be permitted to be given by the plaintiff on trial, of any cause of action, except such as is contained in the

notice. J. 5.

And no action shall be brought against any constable or other officer, or any person acting by his order and in his aid, for any thing done in obedience to the warrant of a justice, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, figned by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any fuch action shall be brought, without making the justice, who figned the warrant, defendant; on producing and proving fuch warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on proof of such warrant the jury shall find for the constable: And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found. J. 6.

And moreover, no action shall be brought against any justice for any thing done in the execution of his office, unless com-

menced within fix months after the act committed. J. 8.

2. On the other hand, it is enacted likewise, by the last men- His punishment, tioned statute, that where the plaintiff in such action against a justice, shall obtain a verdict, and the judge shall in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall have double costs. 24 G. 2. c. 44. f. 7.

Moreover,

Moreover, if a justice will not, on complaint to him made, execute his office, the party grieved may complain to the judges of affize, or to the lord chancellor; and upon examination, if it appeareth that the complaint is true, the chancellor may put him out of the commission, and he shall be punished moreover according to his defert. Crom. 7.

But the most usual way of compelling them to execute their office in any case, is by a writ of mandamus out of the king's

bench.

And in actions brought against justices, they are obliged to shew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, must be produced and proved in court. Seff. Cas. V. I. p. 372. Hill and Bateman. 12 G.

And by the 18 G. z. c. 20. If any person shall act as justice, without a qualification of 100 l. a year, and without making oath at the sessions, as before is mentioned; he shall forfeit 100 l. half to the poor, and half to him that shall sue, with full costs.

Other matters relating to the very extensive office of this magistrate, may be found under their proper heads, in almost every title of this book.

Labourers. See Servants. Landlord and Tenant. See Distress.

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#### Land Tax.

HE land tax acts are annual, but with little variation: The act here inferted is that for this present year, 28 G. 2.

I. The first meeting of the commissioners, for issuing precepts to return assessors.

II. The second meeting; charge to the assessors, and therein concerning the manner of laying the assessment.

III. The third meeting: Signing the affessment, with warrant to collect.

IV. Fourth meeting: The appeal.

V. Collecting.

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VI. Collector paying to the receiver general.

VII. Receiver paying into the exchequer.

VIII. Duplicates to be transmitted into the ex-

IX. General penalty on officers not doing their duty.

X. Indemnity of officers in doing their duty.

I. The first meeting of the commissioners, for issuing precepts to return assessors.

t. Persons named in the act shall be commissioners to put it in Commissioners,

execution. s. 6.

But no person shall be capable to act as commissioner in any county or riding at large (the counties of Merioneth, Cardigan, Carmarthen, Glamorgan, Montgomery, Pembroke, and Monmouth excepted) unless he be seised of lands, tenements, or hereditaments, which were taxed or did pay, last year, in the same county or riding, for the value of 100 l. a year of his own estate. J. 85.

But this shall not extend to commissioners being inhabitants of cities, boroughs, towns corporate, or cinque ports; or the inns of

court, or chancery. J. 87.

And no attorney or folicitor, or person practising as such, shall act as commissioner, without having 100 l. a year, as above. Nor shall any receiver general, or collector of any aid granted to his majesty, act as commissioner. s. 87.

And if any commissioner disabled shall presume to act, he shall

forfeit 50 1. to him who shall sue. f. 90.

Vol. II.

and

#### Land Tax.

And if there are not a sufficient number of qualified commissioners within any city or place for which commissioners are particularly appointed, the commissioners of the county may act therein. f. 81.

To take the oaths.

Time and place

of meeting.

Subdividing.

z. And no commissioner shall act, until he hath taken the oaths of allegiance, supremacy, and abjuration, which shall be administred to him by two or more commissioners, on pain of 2001 to the king. f. 45, 46.

3. And they shall meet at the most usual and common places of

meeting, on or before April 29. f. 7.

4. At which first meeting, they may subdivide themselves, and the other commissioners not then present, so as three or more be appointed for each division; but shall not thereby restrain any commissioners from acting in any other part of the county.

And shall set down in writing, who, and what number of the commissioners shall act in each division, and shall deliver a copy

thereof to the receiver general f. 8.

Receiver general, who.

5. Which receiver general shall be appointed by the king, or in pursuance of his directions; and shall have a salary allowed to him by the lords of the treasury, not exceeding 2 d. a pound.

And the death or removal of a receiver general shall be notified to two or more commissioners, by the commissioners for the affairs of taxes, before the time of the first quarterly payment.

/. II.

And the receiver general shall give notice under his hand and feal of his appointing a deputy (which appointment shall be also under hand and seal) to two or more commissioners, in ten days after the first meeting, and in ten days after the death or removal of a deputy. f. 10.

6. And the faid commissioners, at such first meeting, shall set down in writing the sums to be charged on each division, in proportion to the sums which were assessed thereon by the land tax

act, in the fourth year of the reign of W. & M. f. 7.

Note; There is said to have been a hearing on Feb. 10. 1746. before the barons of the exchequer, upon the question, whether the commissioners of the land tax, at their general meetings for the city and liberty of Westminster, have power to alter the quota's in their several parishes, which was continued next day; and that the barons declared, they could not depart from the 4 W. & M. and the parliament only could redress the aggrieved parishes.

But where the proportion upon any division shall exceed 2 s. in the pound, by reason of the estates of papists and nonjurors having been charged double within such division, in the 4 W. & M. (the sums raised in that year on every division governing the proportions at present) and the faid estates are not now liable to pay double, by reason of their being in the hands of persons who have taken the oaths; in such case two or more commissioners may certify the same to the barons of the exchequer, who may order

to fet down the fums on each division.

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or ou What so much of the proportion upon such division to be abated, as exceeds the full sum of 2s. in the pound upon the estates therein.

7. Also, at such first meeting, two or more commissioners shall Issuing precepts direct their several or joint precepts (A) to such inhabitants, to return affer-high constables, petty constables, bailists and other officers or fors. ministers, and such number of them as they shall think most convenient, to be presentors and assessor, requiring them to appear before the said commissioners, at such time and place, not exceeding eight days after the date of such precept, as they shall appoint. I. 8.

They shall also appoint assessors and collectors, in privileged

and extraparochial places. J. 43.

But no person in a city, borough, or town corporate, shall be compelled to be an affestor or collector out of the limits there-of. f. 41.

II. The second meeting; charge to the assessors, and therein concerning the manner of laying the assessment.

1. Affessor not appearing, without lawful excuse to be made Affessor not apa out on the oath of two witnesses; or appearing, and refusing to pearing. serve, shall forfeit to the king, not more than 5 l. nor less than

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2. The commissioners shall openly read, or cause to be read to Charge to the the assessions, the several rates, duties, and charges, and openly assessions. declare the effect of their charge unto them, and how and in what manner they ought to make their assessments, and how to proceed in the execution of the act. s. 8.

Which shall be in the manner following; that is to fay,

3. Towards raising 1,018,949 l. 14 s. 7 d. at 2 s. in the pound Assessment on in Great Britain, of which England shall raise 994,972 l. 14 s. personal estates and Scotland 23,997 l. 0 s. 7 d. the charge upon personal estates shall be thus: viz. All persons having an estate in goods, wares, merchandizes, or other chattels, or personal estate whatsoever, within Great Britain or without, belonging to or in trust for them, shall pay 2 s. in the pound, according to the true yearly value thereof, that is to say, for every 100 l. of such ready money and debts, and for every 100 l. worth of goods, 10 s. and after that rate for every greater or lesser quantity. Excepting a nd deducting thereout such sums as they bona side owe, and such debts as the commissioners shall judge desperate; and except stock upon lands, and houshold stuff, and debts and loans owing from his majesty. s. 3.

Every person having any publick office or employment and their substitutes shall pay 2 s. for every 20 s. of their salaries. Except

military officers in the army or navy. J. 3.

Every person having an annuity or pension out of the exchequer, or out of any branch of the revenue, or to be paid by any person whatsoever, shall pay 2 s. for every 20 s. Except salaries charged

### Land Tax.

upon lands which pay to the full, and except annuities especially exempted by act of parliament. f. 3. And except annuities paid to superannuated commission or warrant sea officers, or to the widows of sea officers slain in the service of the crown. f. 94. And except money lent or advanced to the government, on the security of the act. f. 132. And except turnpike tolls, and the salaries of turnpike officers. f. 114.

On real eftates.

4. The charge upon real estates shall be as follows: —That the intire sum may be raised, all manors, messuages, lands, and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron mills, surnaces, and other iron works; all parks, chaces, warrens, woods, underwoods, coppices; all sistings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatsoever—shall be charged with as much equality and indifference as possible, by a pound rate, to make up the several sums charged by the act on each county or place. f. 4.

5. Where manors, meffuages, lands, tenements, tithes, and hereditaments are incumbred with rent charges, annuities, fee farm rents, rent fervice or other rents thereupon referved or charged, the owners thereof may detain out of the payment of the fame, a proportionable share of the land tax; provided that such rent or annual payment amount to 20 s. a year or more. f. 5.

Fee farm rents of the crown.

Rent charges.

6. Receivers of fee-farm rents, or other chief rents due to the king, or to any person claiming by grant or purchase from him (by which are meant such fee-farm rents only, as are answerable to the king, or have been purchased from the crown by virtue of the statutes of 22 C. 2. c. 6. and 22 & 23 C. 2. c. 24. or otherwise, and which before March 25. 1693. were not payable to any college, hospital, reader in the universities, or other person exempted) shall allow 2s. for every pound of the said rents, and so proportionably for any greater sum than 10s. to the party paying the same; on pain of 20l. to the party grieved, with full costs. Provided that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such deduction or allowance do not exceed the sum assessed that such as such as the sum of the su

Charities ex-

7. But nothing herein shall charge any college or hall in Oxford or Cambridge, or the colleges of Windfor, Eaton, Winton, or Westminster, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of Bromley; or any hospital, for or in respect of the fites of the faid colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same: Or any master, fellow, or scholar, or exhibitioner of any such college or hall, or any reader, officer, or master of the said universities, colleges, or halls; or any masters or ushers of any schools, for or in respect of any stipends, wages, rents, profits, or exhibitions whatsoever, arising or growing due to them in respect of the said several places or employments: Or any of the lands which before March 25. 1693. did belong to the fites of any college or hall, or to Christ's hospital, St. Bartholomew, Bridewell, St. Thomas, and Bethlehem hospital in London and Southwark; or any other hospitals or alms-

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houses, in respect of any rents, or revenues, which before March 25. 1693. were payable to them, being to be received and difbursed for the immediate use and relief of the poor of the said hospitals and almshouses only. f. 22.

But this shall not discharge any tenants of any houses or lands belonging to the faid colleges, halls, or hospitals, almshouses, or schools, who by their leases or other contracts are obliged to pay

and discharge all rates, taxes, and impositions. f 24.

In general, all fuch lands, revenues, or rents, belonging to any hospital or almshouse, or settled to any charitable or pious use, as were affessed in the 4 W. & M. shall be liable; and no other lands, revenues, or rents, then belonging to any hospital or almshouse, or settled to any charitable or pious use, shall be charged, taxed, or assessed. f. 26.

And if there shall be any question, how far any lands or tenements, belonging to any hospital or almshouse, not exempted by name, shall be liable, the same shall be finally determined at the

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8. No poor person shall be charged with, or liable to the pound Poor exempted. rate, whose lands, tenements, or hereditaments are not of the full yearly value of 20 s. in the whole. f. 75.

9. The commissioners shall assess the affessors. J. 40.

10. And all places, constablewicks, divisions, and allotments the affesfors. shall be affessed in such county, hundred, rape, wapentake, con- In what places flablewick, division, place, or allotment, as they have been usually or divisions perassessed in. f. 23.

Every person, whether he hath a certain place of residence or not, shall be rated for his personal estate, at the place where he is resident at the time of the execution of the act: And if he is out of the realm at the time of the affessment, he shall be rated at

the place where he was last abiding in the realm. f. 48.

H. 7 G. Purret and Weeks. At Taunton affizes, before Price, baron of the exchequer. The plaintiff was an exciseman, and lived in the county of Devon, and executed his office in feveral parishes in that county, and also in a parish that extended into Somersetsbire. And the commissioners of that county, apprehending they had a concurrent power with the commissioners of Devon, to tax him for his falary, on account that he executed his office in their county, they tax him accordingly, and for want of payment distrain. For which, trespass was brought; and ruled, that it well lay; for though he rides about to the publick houses in that county, yet he must be said to keep his office in the town where he lives and hath his books, and there he was only taxable. Str. 417.

And every housholder shall, on demand of the affessors, give an account of the names and qualities of such persons as shall sojourn and lodge in their houses: on pain of 51. to be recovered as

the other penalties. J. 52.

In a city or town corporate, persons having their house in one parish or ward, and goods in another, shall be affested for the whole where they inhabit. J. 30.

Who shall affels

#### Land Tax.

But if a person hath goods in any other county than where he is resident, or had his last residence; he may be assessed for such goods in the county where they are.  $\int$ . 49.

Members of parliament shall be assessed for their personal estate, at their mansion houses or places, where they most usually reside

during the interval of parliament. f. 83.

Officers shall pay for the profits of their offices or employments, where the office is executed, and not where the salary is payable: But all other pensions, stipends, and annuities (not charged upon lands) shall be affested where they are payable. f. 47, 48.

Officers in the receipt of the exchequer, and other publick offices, shall on request of the affessors, deliver gratis true lists or accounts of all pensions, annuities, stipends, or other annual payments, and all sees, falaries, and other allowances; and if the tax thereupon shall not be afterwards paid, it shall be stopped in such offices, and an account thereof shall be given to the collectors. f. 29.

And deputies in office shall pay for their principals. f. 102.

If a person, having two places of residence or otherwise, shall be doubly charged for any personal estate, office, or otherwise; then on certificate of two commissioners for the place of his last personal residence, under hand and seal, of the sum charged upon him there, and on oath made of such certificate before a justice of the place where the certificate shall be made, the person so doubly charged shall be discharged elsewhere. f. 50.

If any person who ought to be taxed for his personal estate, shall, by changing his place of residence, or by any other fraud or covin escape from the taxation, and the same be proved before two commissioners or one justice where such person resideth, within one year after such tax made; he shall pay treble, to be levied on his lands and goods, on certificate thereof made into the ex-

chequer by such justice or commissioners. J. 51.

Every person shall be affessed for lands, where they lie, and

not elsewhere. J. 49.

And such tax shall be paid by the tenant, who shall deduct it out of his rent: and if any difference shall arise between landlord and tenant, the commissioners, or two of them, shall settle the same. f. 15, 16.

But contracts between landlord and tenant, or other persons,

about paying taxes shall not be avoided thereby. f. 32.

11. The tax on foreign ministers houses shall be paid by the

landlord. J. 42.

12. Every papift, or reputed papift, being 18 years of age, and upwards, who shall not have taken the oaths of allegiance and supremacy, 1 W. c. 8. shall pay double; unless he take the said oaths, before two commissioners in ten days after the first meeting. f. 55, 56.

Also every person (whether papist or not) being 18 years old and upwards, and not having taken the said oaths, and upon summons under hand and seal of two commissioners, refusing to take them, or neglecting to appear, shall pay double in like manner.

S. 57. 58.

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Foreign minifters.

Papists and nonjurors.

But quakers refusing to take the oaths, shall not pay double, if they shall make and subscribe the declaration of sidelity in the act of 1 W. c. 18.

13. And at and after the charge given, the commissioners shall Appointing a take care, that warrants be issued forth, and directed to two at time to bring in least of the most able and sufficient inhabitants, appointing and requiring them to be affessors (B); and shall also therein appoint a day and place for the faid affessors to appear before them, and to bring in their affesiments in writing. f. 8.

#### III. The third meeting: Signing the affessment, with warrant to collect.

1. The affesfor, after he is appointed, neglecting or refusing to Penalty on the ferve, or not appearing at fuch third meeting, without lawful ex- affeffor not apcuse to be proved on oath of two witnesses, or not performing his pearing. duty, shall forfeit to the king any sum not exceeding 40 1. to be levied as the rates, and charged to the receiver general. f. 8.

2. At fuch third meeting, the affeffors shall deliver two dupli- Duplicates to be cates of the affesiment in writing, signed by them, to the com-delivered in.

millioners. 3. And shall then also return the names of two or more able Collectors wames and sufficient persons, living within the places where they shall be to be returned. chargeable respectively, to be collectors; for whom the parish or place shall be answerable. f. 8.

4. Then three or more commissioners shall sign and seal two Signing the duduplicates of the affessments, and deliver one of them to the col- plicates. lectors (whom they shall nominate and appoint) with warrant to the faid collectors to collect the fame. (C) f. 8.

5. And they shall at the same time give notice to the collectors, Appointing the at what time and place appeals may be heard and determined: appeal day. which shall be at least 30 days from the time of figning and sealing and delivering the duplicates to the collectors. f. 8.

#### IV. Fourth meeting: The appeal.

1. Every collector shall, within ten days after the receipt of Notice of the apthe duplicates, cause publick notice to be given in every parish peal day to be church or chapel within his district, immediately after divine fer-church. vice on the lord's day (if any fuch divine fervice shall be performed therein within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also, on the same day, cause the like notices to be fixed in writing on the door of fuch church or chapel.

2. And the collectors shall permit the duplicates to be inspected, Collector shall sall seasonable times of the day, without fee. / 8 at all seasonable times of the day, without see. J. 8.

3. Every person intending to appeal, shall give notice thereof spected. in writing to one or more affessors, that they may attend, if they Appellant to give think fit, to justify the assessment. J. 8.

4. And in case of any controversy in apportioning the affest. Commissioner inments, which concern any commissioner, such commissioner con-

notice in writing.

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#### Land Tax.

cerned therein in his own right, or in right of any other for whom he shall act as steward, agent, attorney, or solicitor, shall have no voice, but shall withdraw until it be determined; on pain of any sum not exceeding 201. to be levied and paid as the other sines. f. 20.

Relief in case of evercharge.

5. And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commissioners, or three of them, at the appeal, may make abatement, and cause the sum abated to be reassessed upon the whole hundred, lathe, wapentake, or other division where the overcharges happen, altho the pound rate of 2 s. in the pound be thereby exceeded; or upon any person therein undercharged; so that the whole sum charged on such division be fully answered. f. 79.

Appeal determined, final. 6. And appeals once heard and determined, on the appeal day, shall be final, without any farther appeal upon any pretence what-soever; and without further trouble or suit in law, either in the king's bench or any other court.  $\int .8, 20.$ 

#### V. Collecting.

Demand.

Diffress.

1. The collectors shall make demand of the parties themselves if they can be found, or else at the place of their last abode, or upon the premisses charged. f. 9.

2. And if any person shall refuse or neglect to pay to the collector on demand, he may levy the same by distress and sale of the

goods of the person so neglecting or refusing:

And where any refusal, neglect, or resistance shall be made, he may (calling the constable to his assistance) break open in the day time any house, and by warrant of two commissioners any chest, trunk, box, or other thing, where any such goods are:

Or he may distrain upon the messuages, lands, tenements, and premisses; and the distress so taken, may keep for four days, at the charges of the owner; and if not paid in four days, then the distress shall be appraised by two inhabitants or other sufficient persons, and sold by the collector, returning the overplus immediately (if any be) over and above the tax and charge of taking and keeping the distress. s. 15.

And if any difference shall arise upon taking the distress, the

fame shall be determined and ended by two commissioners. It is In the case of the India company and Skinner, T. 7 W. The desendant pleaded the general issue; and upon evidence it was objected, that the warrant was to break open in case of opposition; and this warrant was granted before any default; which ought not to be, no more than a warrant to distrain for poor rates before demand made; for the first ought to be only a consistant tion of the assessment, and afterwards upon resusal a new warrant is to be made for distress. And Holt Ch. J. said, that strictly it was so; but the practice having been, in this case of taxes, to grant such a conditional warrant to distrain, communis error facit jus. Case of S. 250.

However it is fafer not to leave the non-feafance of the party to the judgment of the officers; but first to issue warrants im-

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powering them to collect, as the act directeth; and then on proof of their refusal, to grant a warrant to distrain.

3. If any person shall refuse or neglect to pay for ten days after Commitment for demand, or shall convey his goods so that distress cannot be made, want of distress. he shall be committed (unless he is a peer) by warrant of two commissioners to the common gaol, until payment of the money af-

fessed, and of the charges for bringing in the same. J. 15. 4. Arrears may be levied by the present commissioners, in the Levying arrears.

fame manner as the present tax. J. 112.

And where lands or houses are unoccupied, and no diffress can be found thereon, the collectors for the time being may distrain at any time after; and shall distribute the money to those who contributed to make it up. f. 36.

5. Where woodlands are affessed, and no distress can be had, Tax on wood the collector or constable by warrant of two commissioners, at lands how to be feafonable times of the year, may cut and fell wood (except tim-

ber trees) to pay the tax. f. 37.

6. If the tax upon any tithes, tolls, profits of markets, fairs, Tax on tithes, or fisheries, or any other annual profits, not distrainable, shall not tolls, and other be paid in fix days after demand, the collector, constable, or other how to be levied. officer, by warrant of two commissioners, may seize and sell so much thereof, wherefoever found, as shall be sufficient to pay the tax and charges accasioned by non payment. \( \int .38. \)

#### VI. Collector paying to the receiver general.

1. The collector shall pay the money received, to the receiver Collector to pay general or his deputy, quarterly; on or before June 24. Sep. 29. to the receiver. Dec. 25. and March 25. at such time and place as two commisfioners shall appoint; so as the whole sums due be answered by the respective quarterly pay days; and so as the collector shall not be obliged to travel above ten miles from his usual place of abode. 1.9, 10, 12, 80.

2. And if the receiver general shall wilfully neglect to attend Receiver neglectat the time and place appointed, he shall forfeit 100 l. half to the ing to attend.

king, and half to him who shall sue. f. 80.

3. The receiver general, or his deputy, shall give a receipt Receiver to give gratis. f. 10.

4. And at every time and place appointed by the commissioners Receiver to defor the collectors to pay the money to the receiver general, he liver lifts of moshall deliver a list of the money received by him, to such person ney received. as two or more commissioners shall under their hands appoint; on pain of 201. to be paid into the exchequer, as the fines on assessors and collectors. J. 103.

5. And the collectors shall have 3 d. in the pound, for collecting Collector to have and giving receipts, which they may detain out of the last pay- 3 d. a pound.

1. 14.

6. If the collector shall keep in his hands any part of the mo Collector making ney by him collected, longer than the time limited, or shall pay default. any part of it to any other person than to the receiver general, or his deputy, he shall forfeit 40 l. f. 76.

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#### Land Tax.

And if any collector shall refuse or neglect to pay any sum by him received, or shall detain in his hands any money by him received, and not pay the same as the act directs, two commis-fioners may imprison him, or may seize his estate as well freehold as copyhold, and all other estate both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators. Which said commissioners may appoint a general meet. ing of the commissioners, and shall give publick notice thereof at least fix days before: And the commissioners at such general meeting may fell such estates, or any part thereof, for payment.

And the commissioners at any general meeting may summon collectors, who have fraudulently converted land tax money to their own use, and cause them to pay the same, to make up the deficiency if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on fuch place, as that money doth amount to: And if fuch collector shall neglect or refuse so to pay, the commissioners may imprison him, and feize and fell his estate for payment. f. 109, 110,

And persons distraining upon collectors, may keep in their hands so much charges for making and keeping, or otherwise relating to the diffress, as two commissioners, who ordered the di-

stress, shall judge reasonable. J. 104.

Receiver to certify defaults.

7. And in case of failure in payment, the receiver general shall certify the same into the exchequer; and the place or persons neg-

lecting shall be liable to process. 1.98.

Deficiency to be

8. If the full proportion upon any division shall not be fully affeffed, levied, and paid; or if any share thereof shall be affessed upon any person not able to pay, or upon any empty or void house or land, where it cannot be collected or levied; or if thro' wilfulness, neglect, mistake, or accident, the affestment shall not be paid to the receiver general or his deputy; the same shall be

Receiver falfly

reassessed upon such division. f. 16.

9. If the receiver general shall return any persons in arrear returning arrears. who have paid, he shall forfeit treble damages to the party, and double the sum unjustly certified, to the king. f. 39.

And no receiver shall return any place in arrear, after three years; but the same shall be a debt on him and his securities.

J. 105.

#### VII. Receiver paying into the exchequer.

Receiver robbed.

1. No receiver general, or any of his agents, shall maintain an action against the hundred, on account of being robbed in carrying the money; unless they be together in company, and in number three at least. f. 113.

Paying into the exchequer.

2. And the receiver general, within 20 days after receipt, shall

pay the money into the exchequer. f. 13.

Which if he shall pay otherwise than into the exchequer, or not within the time limited, he shall forfeit 500 l. to him who

shall fue. f. 76.

VIII. Dupli-

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#### VIII. Duplicates to be transmitted into the exchequer.

1. The commissioners on or before Aug. 8. or in 20 days after Duplicates to be (all appeals being first determined) shall cause to be delivered to transmitted, the receiver general or his deputy, a schedule or duplicate in parchment under their hands and feals, containing the whole sum affessed upon each parish or place; and shall transmit a like schedule or duplicate into the king's remembrancer's office in the exchequer; for which the remembrancer, or his deputy, shall give a receipt gratis, on pain of 10 l. s. 8.

2. In the schedules to be transmitted into the king's remem-Double taxes to brancer's office, the commissioners shall distinguish and set down be specified the gross sum charged in any division for double taxes, that it therein.

may be known how much the double taxes amount to in such di-

vision. f. 116.

3. All which being done, the commissioners clerks, for their Commissioners trouble in writing the assessments, duplicates, and copies, and all clerks to have warrants, orders, and instructions relating thereunto, shall have  $\frac{1}{2}$  in the pound, to be paid by the receiver general, according to the warrant of two commissioners. f. 14.

### IX. General penalty on officers not doing their duty.

neglect or refuse to perform his duty, or shall be guilty of fraud or abuse, three commissioners may fine him not exceeding 40 l. which shall not be taken off, but by a majority of the commissioners who imposed it. To be levied by warrant of the said commissioners by distress and sale; in default of distress (if not a peer) to be committed to prison by two commissioners till payment. f. 17.

2. And all fines shall be paid to the receiver general, and paid To be paid to by him into the exchequer, and shall be inserted in the duplicates the receiver geto be transmitted into the office of the king's remembrancer. neral.

Other penalties are annexed to the feveral offences.

#### X. Indemnity of officers in doing their duty.

1. No commissioner, assessor, or collector, shall be liable to any Officer liable to other penalties than those inslicted by the act.

2. And persons sued for any thing done in the execution hereof, Treble costs.

may plead the general issue, and have treble costs. f. 36.

A. Precept to the high constables to return assessors.

Westmorland. { To John Bowness, gentleman, high constable of the East Ward within the said county.

WE the commissioners of the land tax for the said county, whose names are hereunto set and seals assixed, do hereby require you forthwith upon the receipt hereof, to issue out your warrants to all the petty constables within your said Ward, in the form or to the effect here under following; that is to say,

Westmorland East Ward. To the constable of

BY virtue of a precept from the commissioners of the land tax for the said county to me directed, you are hereby required forthwith to give notice to the last collectors of the said duty within your constablewick, that they and every of them do personally appear before the said commissioners at \_\_\_\_\_\_\_ in the said county, on \_\_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_\_ at the hour of \_\_\_\_\_\_ in the forenoon of the same day, in order to be appointed assessor of the said duty for this present year, and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there, to certify what you shall have done in the execution hereof. Herein sail you not. Given under my hand the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our lord \_\_\_\_\_\_

John Bowness, High Constable,
And this you the said high constable are in no wife to omit, on the
peril that shall ensue thereof. Given under our hands and seals the
day of \_\_\_\_\_ in the year of our lord \_\_\_\_\_

B. Appointment of affessors of the land tax, with their charge.

Westmorland. BY wirtue of an act for granting an aid to his majesty by a land tax, at two shillings in the pound, for the service of this present year, We the commmissioners of the said duty for the county aforesaid, do hereby nominate and appoint to be affessors of the said duty, within the township of county aforesaid. And we do hereby require you the said assessors, to make your affessment for the same, according to the proportions of the last affessment for the said duty within your said township. And of your faid affessment you are to make out two duplicates in writing, and sign the same with your names; and the same, together with the names of two or more able and sufficient inhabitants to be collectors, you are to deliver unto us at — in — in the county aforefaid, on — the — day of — at the hour of — in the forenoon of the Same day. And you are to give notice to the said persons to be by you returned for collectors, that they also do appear at the same time and place, to receive their appointment and charge. Given under our band and feals, the --- day of --- in the year of our lord-AppointWei

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C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Westmorland. III E the commissioners of the land tax for the faid county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint - to be collectors of the land tax for the township of - in the said county for this present year; and do hereby impower them to demand, collet, and receive the same. And you the faid collectors are hereby required, within ten days after your receipt hereof, to cause publick notice to be given in the church or chapel immediately after divine service on the lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the affessment for the same, will be finally beard and determined by the said commissioners, at - in - in the said county, on the - day of - now next ensuing. And if after the time of such determination, any person shall resuse or neglect to pay the same upon demand, you are hereby required forthwith to give notice unto us thereof, that such further proceedings may be had therein, as to law doth appertain. And the same, when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to say, ---- deducting out of the last payment thereof 3 d. for every pound by you collected, for your trouble in collecting and giving receipts. Given under our bands and seals the - day of - in the year of our lord -

Larceny.

# Larceny.

ARCENY comes from latrocinium, latrociny; and by contraction, or rather abuse, larceny. 3 Inst. 107.

I. Of grand larceny in general.

II. Of petit larceny.

III. Larceny from the person.

IV. Larceny from the house.

V. Larceny in a booth or tent.

VI. Larceny on a navigable river.

VII. Other larcenies.

VIII. Receiving Stolen goods.

IX. Advertising or receiving a reward for helping to stolen goods.

X. Charges of prosecution and conviction bow to be paid.

### I. Of grand larceny in general.

Grand larceny is a felonious and fraudulent taking, and carrying away, by any person, of the mere personal goods of another, above the value of 12 d. 1 Haw. 189.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where persons break open a door, in order to execute a warrant, which will not justify such a proceeding; for in such case there is no felonious intention. I Haw. 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare trespass only; but because the variety of circumstances is so great, and the complications thereof so mingled that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; the same must be left to the due and attentive consideration of the judge and jury; wherein the best rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be observed, that the ordinary discovery of a felonious intent is, if the party doth it secretly, or being charged with the goods denies it. I. H. H. 509.

Taking All felony includes trespass; and every indictment must have the words feloniously took, as well as carried away: from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. I Haw. 89.

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And from this ground it hath been holden, that one who finds the goods which I have loft, and converts them to his own use, with intent to steal them, is no felon; and a fortiori therefore it must follow, that one who has the actual possession of my goods by my delivery, for a special purpose, as a carrier who receives them, in order to carry them to a certain place; or a taylor who has them in order to make me a suit of cloaths; or a friend who is intrusted with them to keep for my use, cannot be said to steal them, by imbezilling of them afterwards. I Haw. 89.

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But yet it hath been resolved, that if a carrier open a pack, and take out part of the goods; or a weaver who has received filk to work, or a miller who has corn to grind, take out part thereof, with intent to steal it, it is felony. I Haw. 90.

So where a man's goods are in such a place, where ordinarily they are or may be lawfully placed, and a person takes them, with intent to steal them, it is felony; and the pretence of finding must not excuse. 1 H. H. 506.

So if a man's horse be going upon a common where he has a right to put him, and another take the horse with intent to stead him, it is no finding, but a felony. 1 H. H. 506.

So also, if the horse stray into a neighbour's ground or common, it is felony in him that so takes him. But if the owner of the ground takes him doing damage, or the lord seize him as a stray, tho' perchance he hath no title so to do, yet here is not a selonious intention, and therefore cannot be felony. 1 H. H. 506.

If one man's sheep stray into another man's slock, and that other person drives it along with his stock, or by bare mistake shears it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of selony. 1 H. H. 507.

Lord Hale says, If one man take another man's hay or corn, and mingles it with his own heap or stock; or take another man's cloth, and embroider it with silk or gold; such other person may retake the whole heap of corn, or cock of hay, or garment and embroidery also; and this retaking is no selony, nor so much as a trespass. I. H. H. 513.

It feems generally agreed, that one who has the bare charge, or the special use of goods, but not the possession of them; as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps a key to my chamber, or a guest who has a piece of plate set before him in an inn, may be guilty of selony in fraudulently taking away the same. I Haw. 90.

By the 21 H. 8. c. 7. Servants imbezilling their masters goods, to the value of 40 s. or above (altho' this taking be no trespass) shall be punished as felons. But this shall not extend to any apprentice, nor to any person within 18 years of age:—And by the 12 An. c. 7. If it is taken out of an house, or outhouse, it is felony without benefit of clergy.

Also by the 3 W. c. 9. If any person shall take away, with intent to steal, or imbezil, any furniture out of his lodging, he shall be guilty of selony.

And

### Larceny.

And carrying away] To make it come within this description, it seemeth that any the least removing of the thing taken, from the place where it was before, is sufficient for this purpose, tho it be not quite carried off: And upon this ground, the guest, who having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny: So also was he, who having taken an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. I Haw. 93.

By any person] A wife may be guilty thereof, by stealing the goods of a stranger; but not by stealing the goods of her husband.

1 Haw. 93.

It is faid by Mr. Dalton and others, that it is no felony for one reduced to extreme necessity, to take so much of another's victuals, as will save him from starving; but Lord Hale says, that this rule by the law of England is salse; and therefore that is a person, being under necessity for want of victuals or cloaths, steals another man's goods, it is selony. I. H. H. 54.

If one stealeth another man's goods, and afterwards another stealeth the same from him; the owner may charge the first or

second felon at his choice. Dalt. c. 162.

Of the mere personal goods] Mere; for if the personal goods savour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut, grass in cocks, stones digged out of the quarry; and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 Haw.

But by the 4 G. z. c. 3z. Every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any building, or in any garden, orchard, court-yard, sence, or out-let belonging to any building; he, his aiders and abettors, and also all who shall knowingly buy or receive the same, shall be guilty of selony, and be

transported for seven years.

Also the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper, or parchuent, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt, or other chose in action. I Haw. 93.

But by the 8 H 6. c. 12. If any person shall steal any record or process belonging to any of the courts at Westminster, by reason whereof any judgment shall be reversed, he shall be guilty of

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And by the 2 G. 2. c. 25. If any person shall steal, or take by robbery, any exchequer orders or tallies, or other orders, intitling any other person to any annuity or share in any parliamentary sund; or any exchequer bills; bank notes; South Sea bonds; East India bonds; dividend warrants of the bank, South Sea company, East India company, or any other company; bills of exchange; navy bills or debentures; goldsmiths notes for payment of money; or other bonds or warrants, bills, or promissory notes for payment of money; he shall be guilty of selony, with or without the benefit of clergy, in the same manner as he would have been, if he had stolen or taken by robbery any other goods of like value with the money due thereon: But not to work corruption of blood.

The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die: But yet the stealing of an hawk, knowing it to be reclaimed, is selony by the common law and by statute, in respect of that very high value which was formerly set upon that bird. 1 Haw. 93.

Of another] It feems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treasure trove, or a wreck, waif, or stray, before they have been seized by the persons who have a sight thereto, is not guilty of selony, but shall be punished by sine. 1 Haw. 94.

But yet the taking of these must be, where the party that takes them, really believes them to be such, and colours not a selonious taking under such a pretence; for then every felon would cover his selony under that pretence. I H. H. 506.

Neither shall he who takes fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. I Haw. 94.

Upon the like ground it feems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the house; but it is agreed, that one may commit larceny, in taking such or any other creatures feræ naturæ, if they be sit for food, and reduced to tameness, and known by him to be so. I Haw. 04.

Also it is said, that there may be felony in taking goods, the owner whereof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown; and it seems, that in some cases the law will rather seign a property, where in strictness there is none, than suffer an offender to escape. I Haw. 94.

He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners. I Haw. 94.

And it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted as having stolen it from him, who was the owner thereof when it was put on; for a dead man can have no property. I Have 94.

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## Larceny.

Above the value of 12 d.] The learned editor of Hale's history of the pleas of the crown observes, that in former times, tho' the punishment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ranfom; but in the 9 H. I. it was enacted, that whoever was convicted of theft should be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But confidering the alteration in the value of money, the feverity of it is much greater now than it was then; for 12 d. would then purchase as much as 40 s. will now: and yet a theft above the value of 12 d. is still liable to the fame punishment. Upon which Sir H. Spelman justly observes, that while all things else have rifen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occasion to wish, that the ancient tenderness of life were again restored. 1 H. H. 12.

And Lord Coke, observing that when the statute of the 3 Ed. 1. was made, which makes stealing of goods above the value of 12d. to be grand larceny, the ounce of filver was at the value of 20d. and now it is at the value of 5 s. and above, draws this conclusion, that the thing stolen ought to be reasonably valued; that is, having respect to the great alteration in the value of money. 2 Inft. 189, 190. For 20 s. were then a real pound weight; which name we still retain, although the weight is much dimi-

If two persons or more, together, steal goods above the value of 12 d. every one of them is guilty of grand larceny; for each person is as much an offender as if he had been alone. I Haw.

95

Also it seems the current opinion of all the old books, that if one at several times steal several parcels of goods, each under the value of 12 d. but amounting in the whole to more, from the fame person, and be found guilty thereof on the same indictment, he shall have judgment of death as for grand larceny; but this severity is seldom practised. 1 Haw. 95.

#### II. Of petit larceny.

Petit larceny agrees with grand larceny in the feveral particulars abovementioned, except only the value of the goods (and except as hereafter followeth); fo that wherever an offence would amount to grand larceny, if the thing stolen were above the value of 12 d. it is petit larceny, if it be but of that value or under.

And if one be indicted for stealing goods to the value of 101. and the jury find specially, as they may, that he is guilty, but that the goods are worth but 10 d. he shall not have judgment of

death, but only as for petit larceny. 1 Haw. 95.

In petit larceny there can be no accessaries, neither before nor

after. 1 H. H. 530.

By the 3 Ed. 1. c. 15. Persons indicted of petit larceny, if they were not guilty of some other larceny aforetime, are bailable

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by justices of the peace. And it seems to be agreed, that there is no necessity, that such persons be of good reputation: But yet if the crime be open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2 Haw. 101.

For a justice of the peace before whom an offender shall be brought for petit larceny out of sessions, may not punish the said offender by his discretion, and so let him go; but must have him committed or bailed, to the intent he may come to his trial, as in cases of other felonies: And if upon his trial, the jury shall find the goods stolen to exceed 12 d. in value, the offender shall have judgment to die for the fault. Dalt. c. 154.

It feemeth that all petit larceny is felony, and confequently requires the word feloniously in an indictment for it; yet it is certain, that it is not punishable with the loss of life, or lands, but only with the forfeiture of goods and chattels, and whipping, transportation, or other corporal punishment. 1 Haw. 95.

If a man appear to be obstinately mute, on an arraignment of petit larceny, he shall not have judgment of pain fort & dure, as in cases of grand larceny; but he shall have the like judgment as if he had confessed the indictment. 2 Haw. 329.

### III. Larceny from the person.

If the goods are taken from a man's person, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called robbery: for which fee that title.

If it is without putting him in fear, then it is called barely

larceny from the person. I Haw. 95. If it is done privily without his knowledge, by picking of pockets, or otherwise, it is excluded from the benefit of clergy by the 8 El. c. 4. (That is, if the thing stolen be above the value of 12 d. 2 H. H. 366.) But this statute extendeth not to accessaries,

either before or after. 2 Haw. 350. If it is done openly and avowedly before his face, it is within the benefit of clergy, (1 Haw. 97.) except where it is committed in a dwelling house, or outhouse thereunto belonging, to the value of 40 s. from which the benefit of clergy is taken away by the 12 An. ft. 1. c. 7. hereafter following.

#### IV. Larceny from the house.

This must be understood where the offence falls short of burgdary.

1. By the 3 W. c. 9. Every person that shall feloniously take Robbing a dwelaway any goods, being in any dwelling house, any person being ling house, some therein, and put in fear; or shall rob any dwelling house in the person being day time, any person being therein. day time, any person being therein; he, his comforters and abettors, shall be guilty of felony without benefit of clergy.

2. And by the 39 El. c. 15. Every person who shall be con- Robbing a house victed of the feloniously taking away in the day time any money to the value of

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### Larceny.

or goods of the value of 5 s. in any dwelling house, or outhouse thereunto belonging, and used to and with the same, altho' no person be therein, shall be guilty of felony without benefit of

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This requires an actual breaking, and not entring by the doors

being open. 1 H. H 548.

Stealing out of 3. And by the 12 An. ft. 1. c. 7. Every person that shall an house to the feloniously steal any money, goods, or merchandizes, to the value value of 40 s. no person being of 40s. being in any dwelling house, or outhouse thereunto betherein, and the longing, altho' it be not broken open, nor any person be therein, same not broken shall be guilty of selony without benefit of clergy.

4. And by the 1 Ed. 6. c. 12. f. 10. Every person who shall Breaking a house d. And by the 1 22. 0. 2. 12. 1. 10. Every period who man be in the day time, be convicted of breaking any house in the day time, any person being therein, and put in fear, shall be guilty of felony without

therein, and put benefit of clergy. in fear.

And this altho' nothing be actually taken: But it requires not only an actual breaking, and putting in fear, but also an entry with intent to commit felony, and so to be laid in the indictment. 1 H. H. 548.

Shoplifting, to

5. By the 10 & 11 W. c. 23. Every person that shall, by the value of 5 s. night or by day, in any shop, warehouse, coach-house or stable, privately and feloniously steal any goods, wares, or merchandizes, to the value of 5s. altho' it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Reward for confrom parish of-

6. Every person who shall apprehend any one guilty of breakvicting an offen- ing open houses in a felonious manner; or of privately and seder: Exemption loniously stealing goods, wares, or merchandizes, of the value of 5 s. in any shop, warehouse, coach-house, or stable, tho' they be not broken open, and altho' no person be therein to be put in fear, and shall prosecute him to conviction, shall have a certificate without fee, under the hand of the judge, certifying such conviction, and within what parish or place the felony was committed, and also that such felon was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares to be divided among the persons concerned as to him shall feem just and reasonable:

And if any person shall happen to be slain by any such housebreaker, or other felon as aforefaid, in endeavouring to apprehend him, the executors or administrators of such person slain,

shall have the like certificate:

Which certificate shall be inrolled by the clerk of the peace of the county in which it shall be granted, for which he shall have 15.

And the faid certificate may be once affigned over, and no

And the original proprietor, or the affignee of the same, shall by virtue thereof be discharged from all manner of parish and ward offices, within the parish or ward where the felony was com-

But the certificate shall not be assignable, after it has been once made use of to exempt any person from such office. 10 & H 7. And W. c. 23.

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7. And moreover, as a further reward, every person who shall 401. reward for apprehend any person guilty of the felonious breaking and entering convicting. of any house in the day time, and prosecute him to conviction. shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the affizes, certifying the conviction, and in what parish the said felony was committed, and also that such felon was taken by the person claiming the reward; and if any dispute shall happen to arise between the persons claiming, the judge shall by the said certificate appoint the fame to be paid amongst the parties claiming the same, in such share and proportions as to him shall seem just and reasonable:

And on tender of fuch certificate to the sheriff, and demand made, he shall pay to the person so intitled the sum of 40 /. without fee, within one month after fuch tender and demand; on pain

of forfeiting double, with treble costs. 5 An. c. 31.

8. And if any watchman, or any other person, be killed in 401 to the exeendeavouring to apprehend any such housebreaker, his executors cutors of a peror administrators shall have a certificate delivered under the hand lon killed. and feal of the judge, or of the two next justices, of fuch person being so killed; which certificate they shall, upon sufficient proof before them made, give without fee: Whereupon such executor or administrator shall be intitled to receive the like sum of 40 1. in like manner. 5 An. c. 31. s. 2.

9. And moreover, If any person being out of prison, shall 401. and a parcommit any fuch housebreaking in the day time as aforesaid, and don for convictafterwards discover two or more the like offenders, so as two or ing accomplices. more he convicted, he shall have the like reward and allowance of 40 l. and also all other advantages which are given to persons who shall apprehend and convict any the like offenders; and shall also have the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery made; which pardon shall be likewise a good bar to an

appeal. 5 An. c. 31. f. 4.

10. And the sheriff, on producing the certificates, and receipts Sheriff to be refor the faid rewards, may deduct the fame on his accounts; and paid out of the if he have not money in his hands, he shall be repaid out of the treasury, on certificate from the clerk of the pipe. 5 An. c. 31.

Or instead of charging the same in his accounts, he may immediately apply to the commissioners of the treasury, who shall forthwith repay the same without see. 3 G. c. 15. s. 4.

#### V. Larceny in a booth or tent.

Persons found guilty of robbing any person in any booth or tent, in any fair or market, the owner, his wife, children, or lervants being within, whether they be fleeping or waking, shall fuffer as felons without benefit of clergy. 5 & 6 Ed. 6. c. q.

### Larceny.

#### VI. Larceny on a navigable river.

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All persons who shall feloniously steal any goods or merchandize of the value of 40 s. in any ship, barge, lighter, boat or other vessel or crast, upon any navigable river or in any port of entry or discharge, or in any creek belonging thereto, or from off any wharf or key adjacent to any navigable river, port of entry or discharge, or shall be present and assisting therein, shall be guilty of selony without benefit of clergy. 24 G. 2. c. 45.

#### VII. Other larcenies.

There are moreover divers other larcenies, which are not here specified, the same being inserted under the several titles in this book, to which they do more properly belong, That is to say,

Larceny in stealing woollen cloth off the tenters in the night time, is inserted under the title Bootlen manufacture.

Larceny in stealing linen, fustain, callico, or cotton cloth, yam, or goods laid to be printed, bleached, or dried, to the value of 10 s. under title Linen cloth.

Larceny in stealing cattle or sheep (with a reward of 101. for convicting an offender) under the titles Cattle and Speep.

Larceny in stealing deer in parks, conies or hares in warrens, or fish in ponds, under title Game.

Larceny in stealing hawks or swans, also under title Bame.

#### VIII. Receiving stolen goods.

By the 3 W. c. 9. If any person shall buy or receive any stolen goods, knowing the same to be stolen; he shall be deemed an accessary after the sact, and suffer accordingly. f. 4.

And by the 5 An. c. 31. If any person shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour, or conceal any felons or thieves, knowing them to be so; he shall be deemed accessary to the selony, and, being convicted on the testimony of one witness, shall suffer death as a selon convict.

convict. f. 5.

And by the 4 G. c. 11. Persons convicted of receiving or buying stolen goods, knowing them to be stolen, may be transported for 14 years. f. 1.

And notwithstanding that regularly the accessary cannot be tried, till the principal be convicted, yet by the 5 An. c. 31. it is enacted, that if the principal felon cannot be taken, so as to be profecuted and convicted, yet nevertheless the buyer and receiver of stolen goods may be prosecuted as for a missemeanor, and punished by sine and imprisonment, or other such corporal punishment as the court shall think sit; which shall exempt him from being punished as accessary, if the principal shall be afterwards taken and convicted. 1, 6.

#### IX. Advertising or receiving a reward for belging to Stolen goods.

By the 25 G. 2. c. 36. which hath continuance for 3 years, &c. If any person shall publickly advertise a reward, with no questions asked, for the return of things stolen or lost, or shall make use of words therein purporting that such reward shall be given, without feizing or making inquiry after the person producing such thing; or shall offer to return to any pawnbroker, or other, the money lent thereon, or other reward for the return thereof, he and also the printer and publisher of such advertisement, shall respectively forfeit 50 1. with costs, to him who shall fue in 6 months.

And by the 4 G. c. 11. Wherever any person taketh money or other reward, directly or indirectly, under pretence, or upon account of helping any person to any stolen goods; he shall (unless he apprehend the felon, or cause him to be apprehended, and cause him to be brought to his trial, and give evidence against him) be guilty of felony in the same manner as if he had stolen the same. J. 4.

#### X. Charges of profecution and conviction how to be paid.

By the statutes of the 1 f. c. 10. and the 27 G. 2. c. 3. The offender, if able, shall pay his own charges for carrying to gaol, and of those who guard him thither; and if he is not able, then the treasurer shall pay the same out of the county rates: as is shewn more at large in title Commitment.

And by the 25 G. 2. c. 36. The court before whom any perfon hath been convicted of any grand or petit larceny, may at the prayer of the profecutor, and on confideration of his circumstances, order the county treasurer to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the profecution, with a reasonable allowance for his time and trouble: and the clerk of affize, or of the peace, shall forthwith make out fuch order, and deliver the fame to the profecutor, on payment of 1 s. and the treasurer shall pay the same on sight,

which shall be allowed in his accounts. f. 11.

And by the aforesaid act of the 27 G. 2. c. 3. When any poor person shall appear on his recognizance, in such case, to give evidence, the court may allow him his reasonable charges, to be paid in like manner by the treasurer; the proper officer to have 6d, for making out the order. Except in Middlesex, where the same shall be paid by the overfeers of the poor where the person was appre.

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## Leather.

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Concerning the duties on leather, fee title Excise.

HERE are several statutes unrepealed, which were made before the first year of the reign of K. James the First, concerning leather; but the act made in that year renders them all useless, the same being intended to reduce all the acts into one relating to that commodity; which same thing was attempted in that king's reign, with success, in divers other articles.

Therefore in this title I shall go no farther back than the statute of the 1 J. c. 22. And to avoid abundance of repetitions, I will first insert the methods of recovering the several penalties, and will then proceed with this article in its feveral progresses, in the order of time, from the first flaying off the hide, to its being at last

fold and manufactured in leather, or exported.

I. Of the penalties under this title.

II. Of bides before they come to the tanner.

III. Of the tanning of hides.

IV. Of the currying of hides.

V. Of the searching and sealing of leather.

VI. Of the triers of leather.

VII. Of the selling and registring of leather.

VIII. Of the manufacturing of leather, or exporting it.

#### I. Of the penalties under this title.

Money and goods forfeited by the I J. how to be diftributed.

1. All forfeitures by the act of the 1 7. c. 22. not hereafter otherwise specially directed, shall be divided one third to the king, one third to him that shall sue, and one third to the city, town, or lord of the liberty. 1 J. c. 22. J. 46.

And all leather, shoes, or other things made of tanned or curried leather, seized and condemned by the triers hereaster mentioned, by the faid statute of the 1 J. c. 22. if in London, shall be brought to Guild-hall, and prized by indifferent persons, and the value thereof divided, one third to the feizor, one third to the chamber of London, and one third to fuch poor as the mayor and four aldermen shall appoint: If in any other city, town, or place, they shall be brought to the common hall of such town, or to some convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforefaid,

aforesaid, and the value divided, one third to the poor and in other deeds of charity after the discretion of the mayor or lord of the liberty, one third to the mayor for the use of the commonalty, or to the lord of the liberty where there is no mayor or other fuch like officer, and one third to the seizor. 1 J. c. 22. f. 46.

2. And the abovesaid forfeitures on the 1 J. may be sued for Forseitures on in any court of record, by action of debt, bill, plaint, or inforthe 9 An. how 1 J. c. 22. f. 46.

mation, or otherwise. And likewise all justices of assize, justices of the peace, mayors, and stewards of leets, may inquire thereof in their tessions, leet, or

law day, and hear and determine the same. 1 J. c. 22. J. 50. And moreover by the 9 An. c. 11. Any two justices near where the forfeitures on the said act of the 9 An. shall be incurred, or offence committed, or where any offence shall be committed against the aforesaid act of 1 J. c. 22. may hear and determine the same; who shall on information or complaint, in 3 months after any feizure made, or offence committed, summon the party accused, and the witnesses; and on appearance, or contempt in not appearing (on proof of notice given) shall proceed to examine witnesses on oath, and give judgment, and issue warrants for levying the penalties, and cause the distress to be fold, if not redeemed in fix days. And if either party is not fatisfied with the judgment, he may appeal to the next sessions, who shall determine the same, and in case of conviction issue warrants for levying the penalties.

3. All forfeitures and sums by the act of the 13 & 14 C. 2. Forfeitures on c. 7. shall be recovered in any court at Westminster, or in any the 13 & 14 C. 2. court of record in the city, town, county, or place where the c. 7.

and half to the informer. f. 10.

### II. Of bides before they come to the tanner.

offence shall be committed; to be distributed half to the king,

1. If any raw hide or calf skin shall wilfully or negligently be Gashing hides. gashed or cut in flaying, or being gashed or cut shall be offered to sale; the butcher or other person who impaired the same, or the person offering the same to sale, shall forfeit 2 s. 6 d. for every hide, and is. for every calf skin, half to the poor of the parish where it is found or offered to fale, and half to him that shall sue. 9 An. c. 11. f. 11.

2. No butcher shall water any hide, except in June, July, and Watering hides.

August; on pain of 3 s. 4d. 1 f. c. 22. s. 2.

3. No butcher shall offer any hide to sale, being putrefied; on Rotten hides.

pain of 3 s. 4 d. 1 J. c. 22. f. 2.

4. None but tanners shall buy any rough hide or skin (except Who may buy falt hides for the use of ships); on pain of forfeiting the same, or hides. the value thereof. 1 J. c. 22. s. 7

5. No person shall forestall any hides, nor buy any but in open Forestalling fair or market, unless of persons killing the beast for their own hides. houshold, on pain of 6s. 8d. 1 f. c. 22. s. 7.

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III. Of

## Leather.

#### III. Of the tanning of bides.

Who may be a

Oak bark.

1. No person shall be a tanner, but who hath served 7 years, except the wise or such son of a tanner as hath used the trade sour years, or the son or daughter of a tanner, or such person who shall marry such wise or daughter to whom he shall leave a tan house and fats; on pain of forseiting all such leather by him tanned, or of which he shall receive any profit, or the value thereof. 1 J. c. 22. f. 5.

No tanner shall be a butcher, on pain of 6 s. 8 d. a day. 17.

e. 22. J. 4.

No tanner shall be of any craft exercised in the cutting or working of leather: on pain of forseiting the same, or the value thereof. 1 J. c. 22. s. 6.

2. No person shall regrate or ingross any oaken bark; on pain of forseiting the same, or the value thereof. 1 J. c. 22.

L 10.

No person shall fell any oak trees meet to be barked, where bark is worth 2s. a cart load, over and above the charges of barking and pilling (except timber for houses, ships, or mills) but between April 1. and June 30. on pain of forseiting the same,

or double value thereof. 1 7. c. 22. f. 20.

No purveyor of timber shall fell for the king's use, any oak timber tree meet to be barked, but in barking time (except for the king's houses or ships); or shall receive any profit by any lops, tops, or bark of trees to be taken by them; or shall take or dispose from the owner, any more of any tree so to be taken, than only the timber thereof to be used only about the king's buildings or ships: on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree 40 s. And the owner may withhold any bark, lop, or top, any commission or other matter notwithstanding. 1 J. c. 22. s. 21.

Manner of tan-

3. No tanner shall suffer any hide or skin to lie in the limes till they be overlimed; nor shall put them into any tan fats, before the lime be perfectly sokened and wrought out of them; nor shall use in the tanning thereof any thing but ash bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor shall suffer it to lie wet till it be frozen; nor shall dry it by the fire, or fummer sun; nor shall tan any hide or skin putrefied or rotten; nor shall suffer the hides for utter sole leather to lie in the woozes less than 12 months, nor the hides for upper leathers less than nine months; nor shall negligently work the hides in the woozes, but shall renew and make strong their woozes, as often as shall be requisite; nor shall put to sale any leather tanned in any other sort than by this statute is limited: on pain of forfeiting every hide or skin tanned and offered to sale contrary to this act, or the value 1 J. c. 22. f. 11. thereof.

No tanner shall raise with any mixtures any hide to be converted to backs, bend leather, clouting leather, or any other sole leather, except they be for largeness, state, and growth sit for that purpole, forfer

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pole, to be tried by the triers hereafter mentioned; on pain of

forfeiting the same. 1 7. c. 22. f. 12, 13.

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No person shall set the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or shall put any leather into any hot or warm woozes; or shall tan any hide or skin with any hot or warm woozes; on pain of 10 l. and the pillory on three market days in the next market town. 1 J. c. 22.

If any tanner or other person shall shave or cause to be shaved any hide or calf skin, before it be thoroughly tanned, whereby it shall be impaired; he shall forseit the same or the value, half to the king, and half to him that shall sue. 9 An c. 11. s. 12.

Every tanner, who shall shave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; shall forfeit the same, or the value thereof, and the fearchers and sealers hereafter mentioned may seize them. 13 & 14 C. 2. c. 7. f. 8.

If any tanner shall offer to sale any leather not thoroughly tanned or dried, to the satisfaction of the triers; he shall forfeit so much as shall be so deficient, whether whole hides or part thereof.

#### IV. Of the currying of bides.

1. No currier shall be a tanner, shoemaker, butcher, or other Wto may be a artificer using cutting of leather; on pain of forfeiting 6s. 8d. currier. for every hide he shall curry during the time that he shall occupy

any of the faid misteries. I J. c. 22. f. 25.

2. Every artificer dealing in cutting of leather, or other person, Leather delivered who shall buy any red tanned leather, within London or 3 miles to the currier. thereof, shall before the next market day for sale of leather, give notice thereof to one of the curriers company, and in three weeks after shall deliver the leather so bought (except what shall be used for soles without being curried, tallowed, or dressed) to the said currier, to be curried, tallowed, or dressed; on pain of 6s. 8 d. for every back, butt, hide, or calf skin. 13 & 14 C. 2.

3. No currier shall refuse to curry any leather to him brought In what time he by any artificer being a cutter of leather, and bringing with him shall curry it. sufficient stuff for the perfect liquoring the same, with as convenient speed as may be, not exceeding 8 days in summer, and 16 in winter, in the presence of the said artificer, if he will be present, otherwise in his absence; on pain of forfeiting to the party grieved for every hide or piece of leather not in this manner curried, and well and speedily dressed, 10s. 1 J. c. 22.

1. 26.

And by the 12 G. 2. c. 25. If any currier shall refuse to curry any leather brought or sent to him by any person dealing or working in leather, or shall neglect to curry the same in 16 days between Sep. 28. and March 25. and in 8 days in the remaining part of the year; he shall, on conviction before one justice, on the oath of one witness, forfeit any sum not exceeding 5 l. by distress;

## Leather.

half to the informer, and half to the poor. Persons aggrieved may appeal to the next sessions. f. 4, 5, 6.

Manner of cur-

4. No person shall curry any leather in the house of any shoe. maker or other person, but only in his own house situate in a cor. porate or market town; nor shall curry any leather except it be perfectly tanned; nor shall curry any hide or skin being not tho. roughly dry after his wet feafon; in which wet feafon, he shall not use any stale urine, or any other deceitful or subtle mixture or means to hurt the fame; nor shall curry any leather meet for utter fole leather, with any other stuff than with hard tallow, nor with any less of that than the leather will receive; nor shall curry any leather meet for overleather, and inner foles, but with fuffi. cient stuff, being fresh and not falt, and thoroughly liquored till it can receive no more; nor shall burn or scald any hide or leather in the currying; nor shall shave any leather too thin, nor shall gash ar hurt any leather in the shaving, or by any other means; but shall work the same sufficiently in all points: on pain of forfeiting for every such offence (other than in gashing or hurting in shaving) 6 s. 8 d. and the value of such skin or hide marred by his evil workmanship; and for every offence in gashing or hurting by shaving, double so much to the party grieved as the leather shall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved shall be. 1 J. c. 22. f. 22.

### V. Of the searching and sealing of leather.

Searchers and fealers in London. 1. The mayor and aldermen of London (on pain of 40 l. for every year they make default, half to the king, and half to him that shall sue) shall yearly appoint 8 freemen of some of the companies of cordwainers, curriers, sadlers, or girdlers (whereof one shall be a scaler, and keep a scal for the scaling of leather); who shall be sworn before them to do their office truly: And they shall search and view all tanned leather brought to market, whether it is thoroughly tanned and dried; and if it is, shall seal the same. If c. 22. f. 31.

And four of the faid fearchers shall be removed at the end of the year, and four new ones chosen; and no one shall continue in the office above two years together, nor shall be employed again till after the end of 3 years; on pain of 10 l. a month. 1 J.

c. 22. f. 36.

In other places.

2. And all mayors, and lords of liberties, fairs, and markets, out of the compass of 3 miles from London, shall (on like pain of 40%) appoint and swear yearly two, three, or more honest and skilful men, to be searchers within their precincts; who shall search as often as they shall think good, or need shall be, and shall seal what they find sufficient: And if they find any leather offered to be fold, or brought to be sealed, which shall be insufficiently tanned or curried, or any boots, shoes, bridles, or other thing made of tanned or curried leather, insufficiently tanned, curried, or wrought, they may seize and keep the same, till they be tried by the triers. 1 J. c. 22. f. 32.

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3. The wardens of the curriers shall search and try all such Fee for sealing curried leather as shall be brought to any of their company to be curried, and shall with a seal therefore to be prepared, with convenient speed, not exceeding one day after the currying and request made, seal such leather as they shall find sufficiently curried; taking for every hide so sealed after the rate of one penny for the dicker, and for every six dozen of calves skins one penny, to be paid by the currier: on pain of forfeiture for every hide not searched and sealed 6s. 8 d. 1 J. c. 22. s. 27.

But they shall not visit, search, or seize any leather, hide, or skin, but such as shall be curried or dressed within London or three miles thereof, by some members of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers. I W. Seff. 1. c. 33. f. 4.

4. If any fearcher or fealer shall refuse with convenient speed Penalty on the to seal any leather which is sufficient, or do allow that which is in-searcher or season sufficient; he shall forfeit 40s. If he shall receive any bribe, or missenaving. exact any other see than by this act is appointed, he shall forfeit 20l. And if he shall resuse to execute his office, he shall forfeit 10l. 1 J. c. 22. f. 37.

5. If any person shall deny, or withstand, or not suffer the Penalty on hinfearching or seizing of insufficient wares, he shall forfeit 51. 1 J. fearcher. c. 22. f. 40.

#### VI. Of the triers of leather.

1. The mayor of London (on pain of 5 l. half to the king, and Triers in Lonhalf to him that shall sue) shall within 6 days after notice given don. to him of any seizure of any leather, red and unwrought, appoint 6 triers, two of the cordwainers company, two of the curriers, and two of the tanners using Leadenball market; who upon their oaths to be taken before him, shall on the second or third market day for leather (to be holden on Tuesday, 13 & 14 C. 2. c. 7. f. 9) in the afternoon, try whether the same be sufficient or not.

2. Every other mayor, or lord of liberty, out of the compais In other places. of 3 miles from London, within whose precincts any seizure of any tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather, shall be, shall (on like pain) with all convenient speed after notice given to him of such seizure, appoint six honest and expert men, to try whether the same be sufficient or not; the same trial to be openly on some market day, and within 15 at the surthest from the time of the seizure, upon the oaths of the said triers. 1 7. c. 22. s. 34.

3. Triers not doing their duty, shall forfeit 51. 1 J. c. 22. Triers missef. 35.

#### VII. Of the selling and registring of leather.

1. No person shall put to sale any tanned leather red and un-Selling unsealedwrought, but in open fair or market, unless the same hath been first searched and sealed; nor shall offer to sale any tanned leather

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## Leather.

red and unwrought before it be fearched and fealed; on pain of forfeiting the same, or the value thereof, and also for every hide or piece 6s. 8d. and for every dozen of calves skins 3s. 4d. 1 J. c. 22. f. 14.

But no person shall incur any penalty for selling or buying any

sheep skins unsearched or unsealed. 4 J. c. 6. s. 2.

Where to be fold and regifred. 2. All red tanned leather shall be bought only in the open sair or market, and not in any house, yard, shop, or other place; on pain of forseiting the same, or the value thereof, and the contract to be void. And all such leather shall be searched and sealed before sale, and on sale shall be registered, and an entry made both by the buyer and seller, both being present, and their names and dwellings entred into the book of the register; on pain that every such buyer or seller who shall make default, shall forseit the same or the value thereof. 13 & 14 C. 2. c. 7. f. 4.

Fee for regi-

3. Searchers and sealers shall keep a register, wherein they shall enter all bargains made for leather, hides, or skins, during the fair or market, being thereunto required by the buyer or seller, with the prices; taking for searching, sealing, and registring of every ten hides, backs, or butts, of the seller, 2d. and so after the rate; and for every six dozen of calves skins or sheep skins 2d. and of the buyer after the same rate. 1 J. c. 22. f. 41.

Registring in London. 4. All red tanned leather which shall be brought into London, or within 3 miles thereof, shall be brought to Leadenhall before it be housed, and there viewed whether it hath been searched or sealed, and shall be registred by the searchers, with half such fees to be paid for such of the said tanned leather as shall be bought out of London, or 3 miles compass from the same, and searched and sealed before it be brought within the city; on pain that every person housing or not bringing his leather to Leadenhall as aforesaid, shall forfeit for every hide or skin 63. 8 d. 1 f. c. 22. f. 38.

Buyer of leather felling it again unwrought.

5. By the 1 J. c. 22. No person shall buy any tanned leather unwrought, but who shall work the same into wares; on pain of forseiting the same, or the value thereof. J. 8.

But by the 12 G. 2. c. 25. All persons who deal or work in leather, may buy all forts of tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed; and may cut and sell the same in any small pieces in their open shops. f. 1.

And by the 1 W. Seff. 1. c. 33. All dealers or workers in letther may buy all forts of red tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed, and may sell it again in their open shops, or cut and convert it into

other made ware. f. 5.

Where it may be fold in London.

6. Within London or 3 miles thereof, no person shall sell any wares appertaining to the mistery of any artificer cutting leather, but only in open shop, common sair or market, whereby the wardens may have search thereof; on pain of forfeiting the same, and also 101. 1 J. c. 22. f. 45.

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#### VIII. Of the manufacturing of leather, or exporting it.

1. No shoemaker shall make any boots or shoes, or any part of Shoemaker's them, of English leather wet curried (other than deer skins, calves duty, skins, or goats skins made and dressed like Spanish leather), but of leather well and truly tanned and curried in manner aforefaid, or of leather well and truly tanned only, and well fewed, without mixing overleathers, that is to fay, part being neat's leather, and part calves leather: nor shall put into any part of any shoes or boots, any leather made of a sheep skin, bull hide, or horse hide; nor in the upper leather of any shoes, or into the nether part of any boots (the inner part of the fhoe only excepted) any part of any hide from which the fole leather is cut, called the wombs, necks, shank, flank, powle or cheek; nor shall put into the utter sole any other leather, than the best of the ox or steer hide; nor into the inner fole, any other leather than the wombs, neck, powle, or cheek; nor into the treswels of the double foled shoes, other than the flanks of any the hides aforesaid; nor shall make or put to sale between Sep. 30. and April 20. any shoes or boots meet for any person above 4 years old, wherein shall be any dry English leather, other than calves skins or goat skins made or dressed like Spanish leather; on pain of forfeiting for every pair of shoes or boots 3 s. 4 d. and the value thereof. 1 J. c. 22. J. 28.

2. And if any shoemaker, sadler, or other artificer using of Artificers workleather, do make any wares of any tanned leather insufficiently ing bad leather. tanned, or of tanned and curried leather being not sufficiently tanned and curried; he shall forfeit the same, and the value there-

of. 1 f. c. 22. f. 44.

3. If any shoemaker or cobler within London or 3 miles Shoemakers in thereof, shall put any tanned leather into any boots or shoes, or London. other things made of tanned leather, which shall not be well and perfectly tanned; or do put any curried leather into boots or shoes or other things made of leather, which shall not be sufficiently tanned and curried, and also sealed; he shall forfeit the same, and the value thereof. 1 7. c. 22. f. 44.

4. And the master and wardens of the misteries of cordwainers, Search in Loncurriers, girdlers, and fadlers of London (on pain of 40 /. for every don for infuffi-year they make default, half to the king and half to him that shall sue) shall once a quarter or oftner make search and view of all boots and shoes, and other wares made of tanned leather, within three miles of London, and if they are not truly wrought, they may seize and carry the same to their several common halls. 1 J.

And by the 1 W. Seff. 1. c. 33. f. 3. Every hide, skin, or piece of tanned leather, shaved or liquored, of what colour soever, with any lawful liquor or dreffing, and being well and truly curried, shall be deemed ware within the said statute of the

1 J. c. 22.

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Exportation.

5. All forts of leather and skins, tanned or dressed, may be exported. 20 C. z. c. 5. 9 An. c. 6. s. 4.

### Leet.

Meaning of the word.

to be no other than the court of the lathe; as the county court is the court of the county. For in ancient times the counties were subdivided into lathes, rapes, wapentakes, hundreds, and the like. And the sheriff twice a year performed his tourn or perambulation, for the execution of justice, throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts. And from hence, these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the leet, leeth, or lathe courts.

Lethe was otherwise called Thrying, and contained the third part of a province or shire. Lamb. laws of K. Edw. num. 34.

2. The court leet is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's torn hath in the county. 2 Hazw. 72.

Leet derived 3

3. For the leet, or view of frankpledge, was by the king (for ease of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and refiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn, done unto them at their own doors, without any charge or loss of time. 2 Inst. 71.

from the torn.

Leet, what.

Frankpledge.

4. The inflitution hereof for keeping of the king's peace, was, that every freeman at his age of 12 years (except peers, clergymen, and tenants in ancient demesne, 2 Haw. 57.) should in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or fureties should be found for his truth to the king, and to all his people, or else to be kept in prison: This frankpledge confisted most commonly of ten housholds, which the Saxons called theothung, in the north parts they call them tenmentale, in other places of England tithing; whereof the masters of the nine families who were bound, were of the Saxons called freoborgh, which in some places is to this day called freeborow, that is, free furety, or frankpledge, and the master of the tenth houshold was called theothungmon, to this day in the west called tithingman, and tibenbeefod, and freoborber, that is, capitalis plegius, chief pledge; and these ten masters of families, were bound one for another's family, that each man of their several families should stand to the law, or if he were not forthcoming, that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called decenna, because it confisted most commonly

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of ten housholds, and every man of those several housholds, for whom the pledge or furety was taken, were called decennarii; which names are continued as shadows of antiquity to this day. 2 Inft. 73.

And by the due execution of this law, such peace was univerfally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; fo as a man with a white wand might fafely have ridden before the conquest, with much money about him, without any weapon, throughout England. 2 Inft. 73.

But no person is obliged to appear at any leet, within the pre-

cincts whereof he doth not refide. 2 Haw. 57.

5. He that claims a leet by charter, must hold it on the days Leet when to be prescribed by the charter; he that claims it by prescription, may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath been so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times, as by prescription hath been certainly used. 2 Inft. 72.

6. If a nusance done within the jurisdiction of the leet, be not Offences within presented in the leet, the sheriff in his torn cannot inquire of it; the leet, not infor that which is within the precinct of the leet is exempt from torn, the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to inquire thereof.

7. It feems that a court leet is fo far intrufted with the keeping Steward may commit for an of the peace within its own precinct, that the steward of it may affray. by recognizance bind any person to the peace, who shall make an affray in his presence, sitting the court, or may commit him to ward, either for want of fureties, or by way of punishment, without demanding any fureties of him, in which case he may afterwards impose a fine according to his discretion. 2 Haw. 4.

8. The leet hath power to receive indictments of felonies at What felonies the common law, but not of felonies by act of parliament, unless are cognizable in

specially limited thereto. 2 H. H. 71.

9. Furthermore, this court hath cognizance of a great number Other publick of offences, both by the common law, and by statute; as for in-offences. stance, tipling in alehouses; affaults whereby bloodshed ensueth; common barators; bawdy houses; defects in bridges and highways; destroyers of ancient boundaries; bakers; brewers; butchers; curriers; cottages and inmates; deciners or fuitors not appearing in the leet; estrays, waifs, and treasure trove; eaves droppers; forestallers, regrators, ingrossers; destroyers of game; gamesters; hedge breakers; neglecters of hue and cry; higlers; innholders; millers; night walkers; common nusances; want of pillory, and flocks, and common pounds; rescous; scolds; shoemakers; searchers of leather; stoned horses of two years old put on the common; victualters; conflables neglecting watch and ward; weights and measures; and many others by particular itatutes. Wood 836.

10. But a man cannot be presented in the leet for furtharging Private offences. the common, or for digging in the common; because this con-Vol. II.

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cerns the private, not the publick interest, and belongs rather to the court baron to inquire of it. Wood 838.

11. Also no offence is cognizable in the leet, unless it arose Within what time offences are fince the holding of the last court. 2 Haw. 66.

12. The constables of common right are to be chosen and

Constableschosen sworn in the leet or torn. 2 Harv. 62.

Turors.

13. The leet feems not to be within the equity of the flatute of 1 R. 3. which requires that the jurors in the torn shall have 201. a year freehold, or 26 s. 8 d. copyhold or cuttomary; for it is faid, that any person happening to be present at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the leet or not; by which it feems to be implied, that any person whatsoever is capable of being put upon the jury in a coun leet. 2 Haw. 69.

Indictments to be indented.

14. Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the steward, to

prevent embezilling. 2 Haw. 69.

Indictments of felonies, how to be certified.

15. Altho' the leet may receive indictments of felony, yet it cannot hear and determine them, but must fend them to the gaol delivery, there to be heard and determined, if the offenders are in custody; or remove them by certiorari into the king's bench, that process may be made upon them to outlawry. 2 H. H. 71.

Traverse.

16. It feems to be agreed, that a presentment in the leet, of any offence within the jurisdiction of the court, being neither capital, nor concerning any freehold, subjects the party to a fine or amerciament without any farther proceeding, and admits of no traverse to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traversed. 1 Haw. 217, 219. 2 Haw. 71.

Fine.

17. A fine is a pecuniary punishment, assessed by the steward, for an offence or contempt committed in court, or by publick officers out of court, in administration of their offices; a fine is always affeffed by the steward, and is not to be affeered, tho' fometimes it is called an amerciament; and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt, for a fine imposed, but he cannot imprison; and this is the only court that can fine and not imprison. Wood 837. 2 Haw. 61.

Amerciament.

18. An amerciament is a pecuniary punishment, affessed by the homage or jury, for offences committed out of court by private persons, to be mitigated by affeerers (from affeurer, to tax), who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute; and for this also the lord may have an action of debt, or may distrain of common right, and impound the diffress, or fell it at his pleasure, but cannot imprison for it. Wood 838.

Amerciament how recovered.

19. And upon presentment of a nusance, the steward may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain fum; or he may order him to remove it, under fuch a pain, without amercing him it all: and on presentment at another court, that he hath not removed moved such nusance (having had notice thereof) the pain may be recovered by diffress or action of debt, without farther proceeding. 2 Haw. 61.

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20. It feemeth that of common right any court leet, with the By-laws, affent of the tenants, may make by laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways, and the like: And also a court baron by custom may make by laws, for the well regulating of commons, and such like private matters. And therefore where a court leet and baron are holden together, as they usually are, it feems, that what is transacted therein, in relation to publick matters, shall be applied to the jurisdiction of the court leet, and what is done in relation to private matters, shall be intended to be done by the court baron. 2 Have. 68.

21. The lord of the leet ought to have a pillory and tum-Pillory and brel; and for want thereof, he may be fined, or his liberty feized. Rocks. Cro. El. 698.

But the flocks are to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. Wood 838.

22. But the business of the leet hath declined for many years; Business devolved and is devolved on the quarter sessions.

### Letter.

Py the 9 G. c. 22. which by the last continuance is of force until Sep. 1. 1757, &c. and by the 27 G. 2. c. 15. If any person shall knowingly send any letter, without any name subscribed thereto, or signed with a sictitious name, demanding money, or other valuable thing, or threatning to kill or murder any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw; or shall rescue any person in custody for such offence; he shall be guilty of selony without benefit of clergy.

Seditious or defamatory letters, belong to title Libel.

### Lewdness...

I. I F any offend their brethren by adultery, whoredom, incest, or any other uncleanness, the churchwardens shall present them to the ordinary, and they shall not be admitted to the holy communion, till they be reformed. Can. 109.

## Lewonels.

2. But altho' lewdness be properly punishable by the ecclessistical law, yet the offence of keeping a bawdy house cometh also under the cognizance of the law temporal, as a common nusance, not only in respect of its endangering the publick peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 3 Inst. 205. 1 Haw. 196.

3. And in general, all open lewdness grossly scandalous is pu-

nishable upon indicament at the common law. 1 Haw. 7.

4. And offenders of this kind are punishable not only with fine

4. And offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper. I Haw. 196.

5. And upon information given to a constable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a suspected house together in the night, the officer may take company with him, and if he find them so, he may carry them before a justice, to find sureties of the good behaviour. Dalt. c. 124. 2 Haw. 61.

6. For it feems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houses with women of bad fame, as also for keeping bad women

in his own house. I Haw. 132.

7. And a wife may be indicted together with her husband, and condemned to the pillory with him, for keeping a bawdy house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. I Haw. 2.

8. And if a wife go away, and remain with an adulterer, without being reconciled to her husband, she shall lose her dower.

2 Inft. 435.

9. But if a person is indicted for frequenting a bawdy house, it must appear that he knew it to be such a house; and it must be expressly alledged that it is a bawdy house, and not that it is

fuspected to be such a house. Wood 686.

10. On an indictment for keeping a diforderly house, a semale witness swore, that she was a sailor's wife, and during her husband's absence out of the realm, she had often prostituted her self there: Lord Raymond said, it was an odious piece of evidence, and ought not to be heard. Bark. Bawdy-h.

11. But it is faid, a woman cannot be indicted for being a bawd generally, for that the bare folicitation of chastity is not in-

dictable. 1 Haw. 196. 1 Salk. 382.

12. Adultery and fornication were anciently inquirable in the torn and leet. 2 Inft. 206. And this power doth not feem to have been taken away by any statute.

13. The crime of incest is excepted out of the general pardon

of the 20 G. 2. c. 52.

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### Indictment for keeping a diforderly house.

Westmorland. THE jurors for our lord the king upon their oath faid county, labourer, on the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_ and at divers other times as well before as after, with force and arms, at - aforefaid, in the county aforefaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed, and diforderly house, and in his said house, for his own lucre and gain, certain evil and ill-disposed persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together then, and the faid divers other times, there unlawfully and wilfully did eguse and procure; and the said men and women, in h faid house, at unlawful times, as well in the night as in the day then and the faid other times, there to be and remain, drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully dia permit, and yet doth permit, to the great damage and common nusance of all the subjects of our said lord the king, and against the peace of our faid lord the king, his crown and dignity.

### Libel.

I. What it is.
II. Who are punishable for it.
III. How punishable.

#### I. What it is.

A Libel is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead. Wood 740.

A malicious defamation] And the scandal which is expressed in a scotting and ironical manner, is as properly a malicious defamation, as that which is expressed in direct terms; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like: which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. I Haw. 194.

And from the same foundation it hath also been resolved, that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after,

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it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trissing evasions: And it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. I Haw. 194.

And it matters not whether the libel be true, or whether the party against whom it is made be of good or bad same; for in a settled state of government, the party grieved ought to complain, for any injury done to him, in the ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise. 5 Co. 125. But this is to be understood, when the prosecution is by information or indictment; but in an action on the case, one may justify that it is true. Wood

740.

Of any person Where a writing inveighs against mankind in general, or against a particular order of men, as for instance, men of the gown, this is no libel; but it must descend to particulars and individuals to make it a libel. 3 Salk. 224.

And it hath been agreed in the court of king's bench, that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any profecution at common law: yet it seems that the author may be bound to his good behaviour, as a scandalous person of evil same. I Haw. 195.

But if the libel is only against a private person, yet it deserveth severe punishment; for albeit the libel be against one, yet it inciteth all those of the same family, kindred, or society, to revenge, and so tendeth by consequence to quarrels, and breach of the peace, and may be the cause of effusion of blood, and of great inconvenience: But if it be against a magistrate, or other publick person, it is a greater offence; for it concerneth not only the breach of the peace, but the scandal of the government. 5 Co. 125.

Expressed either in printing or writing, signs or pictures A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is published to the contumely of another, by which his same or dignity may be prejudiced; Without writing, may be by pictures, as to paint the party in any shameful and ignominious manner; or by signs, as to six a gallows, or other reproachful and ignominious signs at a man's door. 5 Co. 125.

E. 7 G. Mayor of Northampton's case. He sent Lord Holifax a licence to keep a publick house, which the court said was a libel in the case of a person of his quality, and granted an infor-

mation for it. Str. 422.

Or the memory of one that is dead ] For the offence is the same, whether the person libelled be alive or dead. 5 Co. 125.

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#### II. Who are punishable for it.

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It is certain, that not only he who composes a libel, or procures another to compose it, but also he who publishes, or procures another to publish it, are in danger of being punished for it; and it is said not to be material, whether he who disperses a libel knew any thing of the contents or effect of it or not; for nothing would be more easy, than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher, would make him safe in dispersing them. 1 Hage. 195.

Also it hath been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. 1 Haw. 195.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove, that he delivered it to a magistrate to examine it. 1 Haw. 195.

And it hath been ruled, that the finding a libel on a bookfeller's shelf, is a publication of it by the bookseller; and that it is no excuse to say, that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. Seff. C. V. 1. p. 33. K. and Dodd, 10 G.

And it feems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel, till it was reduced to writing: For the essence of a libel consistent in the writing of it; for if a man speaks such words, unless the words be put in writing, it is not a libel. 2 Salk. 419. 1 Haw.

Also it hath been resolved, that the sending of a letter sull of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. I Haw. 195.

But it hath been refolved, that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publickly known, is an evidence of the publication of it. 1 Haw. 196.

The way for a man to keep himself out of danger in such cases is, if he finds a libel, and it be composed against a private person, he either may burn it, or forthwith deliver it to a magistrate; but if it concern a magistrate, or other publick person, he ought immediately to deliver it to a magistrate, to the intent that by examination and enquiry, the author may be sound and punished. 5 Co. 125.

#### III. How punishable.

There feemeth to be no doubt, but that the offenders may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 Haw. 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable be-

fore justices of the peace. 2 Haw. 40.

On an indictment setting forth the offence, according to the tenor and to the effect following, it was agreed by the court, that to the effect following had been naught, being vague and useless words; for the court must judge of the words themselves: but the words, according to the tenor, do correct the defect; for they import the very words themselves, for the tenor of a thing is the transcript and true copy of it, to which it may be compared: and therefore of words spoken there can be no tenor, because there is no written original. 2 Salk. 417. 3 Salk. 225.

And it must be proved to be written or published, in the county laid in the indictment; all matters of crime being local. Read.

Lib. State Tr. V. 3. 774, 775. V. 4. 672.

to deliver at a competitiate, to make an

#### Indictment for a libel.

HE jurors for our lord the king upon their oath present, that A. O. late of - in the county of - gentleman, not having god before his eyes, but moved by the infligation of the devil, and falsly and maliciously contriving and intending to bring our said lord the king into batred and infamy among ft bis subjects, and to move sedition among st the subjects of our said lord the king, did on the \_\_\_\_ day of \_\_\_ in the \_\_\_ year of the reign of \_\_\_ with force and arms, at \_\_\_ aforesaid, in the county aforefaid, falfly, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, intitled - In which said libel are contained, among other things, divers false, seditious, scandalous, and malicious matters, according to the tenor following, to wit, - And in another part of the same libel are contained divers other false, seditious, scandalous, and malicious matters, according to the tenor following - to the evil example of all others in the like case offending, and against the peace of our said lord the king, bis crown and dignity.

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# Linen cloth.

OR the duties on linen cloth printed or stained, see title Ercife.

For journeymen and other workmen imbezilling the materials of

the linen manufacture, fee title Berbants.

1. Any person, native or foreigner, may without paying any Who may set up thing, in any place, privileged or unprivileged, corporate or not trades in the licorporate, fet up and exercise the occupation of breaking, hick-nen manufacling, or dreffing of hemp or flax; as also for making and whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mistery of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings. 15 C. 2. c. 15. f. 2.

And all foreigners that shall use any the trades aforesaid three years, shall (taking the oaths of allegiance and supremacy before two justices near unto their dwellings) enjoy all privileges as na-

tural born subjects. J. 3.

2. Whereas certain evil disposed persons, by fundry devices, Spoiling linear firetch linen cloth both in length and breadth, and then with bat- cloth in dreffing. tledoors or otherwise beat the same, casting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby loofened and made weak; If any person shall hereafter use the said deceits, or do any other act with any linen cloth whereby it shall be made worse, the said cloth shall be forfeited, and the offender punished by one month's imprisonment at the least, and pay such fine as the justices shall affess. ſ. I.

And the judges of affize, and justices of the peace or three of them (1 2.) may hear and determine the fame in their fessions. by information, indictment, or upon the traverse of any present-

ment or indictment found before them. f. 2.

And if any person shall seize any such deceitful linen cloth, he shall at the next sessions, or before two justices (12.) make due information of the offence and of the seizure, or else shall procure the offender to be indicted at the next fessions, and shall also be bound by recognizance or obligation to pursue the same with effect, and to give evidence, and to pay the moiety of what he shall recover, to the sheriff or other accountant to the use of the king. And the other half shall go to the informer or prosecutor.

And the justices before whom the offence shall be tried, shall certify the same by estreat into the exchequer yearly at Michaelmas as they do other estreats, and thereupon the barons may make process for so much thereof as appertaineth to the king, in like manner as for other fines. J. 4.

3. Every person who shall, by day or night, feloniously steal Stealing linen any linen, fustian, calico, or cotton cloth; or cloth worked, cloth.

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woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, fillering, laces, or any other linen, fustian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 101, or shall knowingly buy or receive any such wares stolen, shall be guilty of felony without benefit of clergy. 18 G. 2.

Affixing counserfeit stamps on linen cloth.

4. If any person shall cause any stamps to be affixed to any foreign linens imported, in imitation of the stamps put on Scotch or Irish linens; he shall forfeit 51. for each piece: Or if any person shall expose or pack up for sale any foreign linens (knowing them to be so stamped) as the manusacture of Scotland or Ireland; he shall forfeit the same, and also 51. for each piece. And if any person shall affix any counterfeit stamp on any linen of the manusacture of Great Britain or Ireland, in order to vend the same as linens duly stamped; he shall forfeit 51. for each piece: And if any person shall expose or pack up for sale, any such linens, knowing them to be so stamped; he shall forseit the same, and also 51. for each piece. 17 G. 2. c. 30. f. 1.

And one justice may convict the offender on the oath of one witness, and may grant his warrant for distress and sale; and for want of sufficient distress, any justice, on proof thereof made on oath by the person executing the warrant, may commit him to gaol for fix months, unless it be paid sooner: Which penalty shall go to the informer, deducting 2 s. in the pound to be paid to the

constable who shall execute the warrant. f. 2.

Ling. Burning of it. See Burning. Loom lace. See Buttons.

# Lord's day.

Reforting to church on the lord's day. 1. A L L persons, not having reasonable excuse, shall resort to their parish church or chapel (or to some congregation of religious worship allowed by the toleration act) on every Sunday; on pain of punishment by the censures of the church, or of softeiting 1 s. to the poor for every offence. 1 El. c. 2. f. 14, 24. To be levied by the churchwardens by distress, by warrant of one instince.

Sports on the lord's day.

justice. 3 f. c. 4. f. 27, 28.

2. King James the first, in 1618, publickly declared to his subjects, in what was called the book of sports, these games following to be lawful, viz. dancing, archery, leaping, vaulting, maygames, whitson ales, and morris dances; and did command that no such honest mirth or recreation should be forbidden to his subjects on Sundays after evening service: But restraining all recusants from this liberty; and commanding each parish to use these recreations by itself; and prohibiting all unlawful games,

bear baiting, bull baiting, interludes, and bowling by the meaner fort. Dalt. c. 46.

After which it was enacted by the statute of the I C. c. I. that there shall be no concourse of people out of their own parifles on the lord's day, for any sports or pastimes; nor any bearbaiting, bull baiting, interludes, common plays, or other unlawful exercises and pastimes used by any persons within their own parishes; on pain that every offender, being convicted within a month after the offence, before one justice, on view, or confeffion, or oath of one witness, shall forfeit for every offence 3 s. 4d. to the poor, to be levied by the constable and churchwardens by diffres: In default of diffress, the party to be set publickly in the flocks for 3 hours.

3. By the 1 F. c. 22. No Shoemaker shall shew, to the intent Exercising to put to fale, any fhoes, boots, buskins, startops, slippers, or worldly callings pantofles, upon the Sunday; on pain of 3s. 4d. a pair, and the day. value thereof: to be recovered at the affizes, fessions, or leet; one third to the king, one third to him who shall sue, and one third

to the town or lord of the leet. 1. 28, 46, 50.

And by the 3 C. c. 1. No carrier with any horse or horses, nor waggonman with any waggon, nor wainman, with any wain, nor drover with any cattle, shall by themselves, or any other, travel on the lord's day, on pain of 20 s. or if any butcher, by himself, or any other for him, with his privity and consent, shall kill or fell any victual, on the lord's day, he shall forfeit 6 s. 8 d. The conviction to be in fix months before one justice, or mayor, on view, or confession, or oath of two witnesses; to be levied by the constable or churchwarden, by distress; or to be recovered in any court of record, in any city or town corporate. before the juflices in fessions; to be applied to the use of the poor, except that the justice may reward the informer or prosecutor with part of the forfeiture, not exceeding one third part.

And by the 29 C. 2. c. 7. it is further enacted, that no drover, horse courser, waggoner, butcher, higler, or any of their servants, shall travel, or come to his inn or lodging on the lord's day, on pain of 20 s. and in general, that no tradesman, artificer, workman, labourer, or other person, shall do or exercise any worldly labour, business, or work of their ordinary callings, on the lord's day; (except works of necessity and charity; and except dreffing of meat in families, and dreffing and felling of meat in inns, or cooks shops, or victualling houses, for such as cannot otherwise be provided; and by the q An. c. 23. s. 20. except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5s. and also that no person shall publickly cry, shew forth, or expose to fale, any wares, merchandizes, fruit, herbs, goods or chattels whatfoever, on the lord's day (except crying and felling of milk, before nine in the morning, and after four in the afternoon; and except mackarel, which may be fold on Sundays,

before or after divine service, by the 10 & 11 W. c. 24. f. 14.); on pain of forfeiting the same: And also that no person shall use, employ, or travel on the lord's day, with any boat, wherry,

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### Lord's day.

lighter, or barge (unless allowed by a justice of the peace, on extraordinary occasion; and except 40 watermen who may ply on the Thames on Sundays betwixt Vaux-hall and Lime-bouse, by the 11 & 12 W. c. 21. f. 13.) on pain of 5 s. and if any per. fon offending in any of the premisses, shall be thereof convicted, in 3 months after the offence, before one justice, on view, or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods cried, shewed forth, or put to sale, and to sell the same; and to levy the other forfeitures by diffres; to the use of the poor, except that the justice may out of the same reward the informer with any sum not exceeding one third part. And for want of distress, the offender shall be set publickly in the stocks for two hours.

Serving process on the lord's day,

4. No person, upon the lord's day, shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree. 29 C. 2. c. 7. f. 6.

But this doth not extend to ecclesiastical process, as citations, or

excommunications. Cod. 271.

A justice issued a warrant to the constable, to make a person to find fureties for his good behaviour: the constable executed the warrant on a Sunday, and he was justified by the court; who refolved, that a warrant for the good behaviour is a warrant for the peace, and more; and that this statute is to be favourably interpreted for the peace. Raym. 250.

5. No hundred shall be answerable for any robbery on the Robbery on the lord's day: Nevertheless the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. 29 C. 2.

c. 7. S. 5.

lord's day.

Warrant on the 3 C. c. 1. and 29 C. 2. c. 7. to levy 20 s. on a carrier for travelling on the lord's day; which same will do, mutatis mutandis, for the other penalties under this title.

Westmorland To the constable of -

one of his majesty's justices assigned to keep the peace in the said county, and also to bear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, for that he the said A. O. on the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of - being the lord's day, commonly called Sunday, with his horses into and through your said parish of - did ravel, contrary to the flatutes in that case made and provided,

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ovided, whereby whereby he hath forfeited the fum of 20 s. of lawful money of England; these are therefore to command you forthwith to levy the said jum of 20 s. by distraining the goods and chattels of him the said A.O. And if within the space of [five] days next ofter such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the faid goods and chattels so by you distrained, and out of the money arifing by such sale, that you do pay the sum of 6s. 8d. part of the said sum of 20 s. to A. I. of \_\_\_\_\_ yeoman, who informed me of the faid offence, and that you see the remaining sum of 13 s. 4 d. employed to the use of the poor of your said parish of returning to him the faid A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and feal at - in the faid county, the -- day of -

> Lotteries. See Gaming. Low wines. See Excise. Lowbells. See Game.

### Lunaticks.

1. No N compos mentis is of four kinds:

First, Ideots; who are of non fane memory from Who. their nativity, by a perpetual infirmity.

Secondly, Those that lose their memory and understanding by

the vifitation of god, as by fickness, or other accident.

Thirdly, Lunaticks; who have fometimes their understanding, and fometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themselves of their memory and understanding. Infl. 247.

2. He who incites a madman to do a murder, or other crime, Inciting him to is a principal offender, and as much punishable as if he had done commit a crime.

it himself. 1 Haw. 2.

3. But ideots and lunaticks, who are under a natural disability Not punishable of distinguishing between good and evil, are not punishable by for criminal of-any criminal prosecution. I Have. 2.

Yet drunkards shall have no privilege by their want of found mind; but shall have the same judgment as if they were in their

right fenses. 1 Inft. 247. 1 Haw. 2. 1 H. H. 32.

4. But if a person, who wants discretion, commit a trespais, Punishable for against the person or possession of another; he shall be compelled civil offences. in a civil action to give satisfaction for the damage. 1 Hazv. 2.

### Lunaticks.

Becoming non compos before trial.

How tried whether he is non compos. 5. If one who hath committed a capital offence become non compos before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. Hale's Pl. 10. 1 Haw. 2.

6. By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if it be found by them, that the party only seigns himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute. I Haw. 2.

Whether he may bring an appeal. Whether he may be an approver. Friends reftraining him.

7. An ideot cannot bring an appeal. 1 Haw. 162.

Whether he may the oath in that case required, nor wage battle. 3 Inst. 129.

Friends reftraining mad, in such manner as is proper in such circumstances. 1

Haw. 130.

Overseers refraining him. 10. By the 17 G. 2. c. 5. it is enacted, that whereas there are fometimes persons, who by lunacy, or otherwise, are suriously mad, or are so far disordered in their senses, that they may be dangerous to be permitted to go abroad, it shall therefore be lawful for two or more justices where such lunatick or mad person shall be found, by warrant directed to the constables, church wardens, and overseers of the place, or some of them, to cause such person to be apprehended, and kept safely locked up in some secure place, within the county or precinct, as such justices shall under their hands and seals direct and appoint, (and if such justices find it necessary) to be there chained, if the settlement of such person shall be within such county or precinct.

And if such settlement shall not be there, then such person shall be sent to his settlement by a vagrant pass (mutatis mutandis); and shall be locked up or chained by warrant of two justices of the county or precinct, to which such person is so sent, in manner

aforesaid :

And the reasonable charges of removing, and of keeping, maintaining, and curing such person, during such restraint (which shall be during such time only as such lunacy or madness shall continue), shall be satisfied and paid (such charges being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands, as is necessary to pay the same; and to account for what is so seized, so so received, to the next quarter sessions: But if such person hath not an estate to satisfy the lame, over and above what shall be sufficient to maintain his samily, then such charges shall be paid by the parish, town, or place, to which such person belongs, by order of two justices, directed to the churchwardens or oversees for that purpose. s. 20.

Provided, that any person aggrieved by any act of such justices out of sessions, may appeal to the next sessions, giving reasonable

notice; whose order therein shall be final. f. 28.

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3.

But nothing herein shall restrain or abridge the power of the king, or lord chancellor; nor shall restrain or prevent any friend from taking them under their own care and protection. f. 21.

11. The king is the general guardian of ideots and lunaticks. King the guar-

17 Ed. 2. ft. 1. c. 9, 10.

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12. A person of non sane memory shall not avoid his own act, Whether he may by reason of this defect; but his heir or executor may. 4 Co. avoid his own Beverley's cafe.

15. If an ideot takes a wife, they are husband and wife in law, Whether he can and their issue legitimate; for he is allowed to be capable of con-consent to mar-

fenting to marriage. 1 Sid. 112.

But by the 15 G. 2. c. 30. Lunaticks, found so by inquisition by commission under the great seal; or any lunatick or person under a phrenzy, whose person and estate is vested in trustees by act of parliament, if they marry before they are declared of found mind by the lord chancellor, or the truftees or major part of them respectively, every such marriage shall be void.

14. To make a will, it is not sufficient that the testator have Whether he may memory to answer to familiar and usual questions, but he ought to make a will.

his estate, with understanding and reason. 6 Co. 23.

Lurcher. See Bame. Lutestrings. See Silks.

have a disposing memory, so as to be able to make a disposition of

#### Madmen. See Lunaticks.

## Maim.

M AIM is fuch a hurt of any part of a man's body, whereby he is rendred less able in fighting, either to defend himself, or annoy his adversary. I Haw. 111.

2. For the members of every subject are under the safeguard and protection of the law, to the end a man may ferve his king and country, when occasion shall be offered: and therefore a person who maims himself, that he may have the more colour to beg, may be indicted and fined. 1 Inft. 127.

And by the like reason, a person who disables himself, that he

may not be impressed for a soldier.

3. The cutting off, or difabling, or weakning a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are laid to be maims, but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken, but only disfigure him. 1 Haw. 111, 112.

4. It is faid, that anciently castration was punished with death; and other maims with the loss of member for member; but after-

overlees h justices easonable

But

# Maint.

wards no maim was punished in any case with the loss of life of member, but only with fine and imprisonment. I Haw. 112.

But now by the 22 & 23 C. 2. c. 1. (which is called the Coventry act, because it was made on the occasion of Sir John Coventry's being assaulted in the street, and his nose slit) If any person, on purpose, and of malice forethought, and by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intention in so doing to maim or disfigure him; the person so offending, his counsellors, aiders, and abettors (knowing of and privy to the offence) shall be guilty of felony without benefit of clergy; but not to work corruption of blood.

5. If a man attack another with intent to murder him, and he does not murder, but only main him; the offence is nevertheless

within this flatute. 1 Haw. 112.

6. If the maim comes not within any of the descriptions in the 2ct, yet it is indictable at the common law, and may be punished by fine and imprisonment: Or an appeal may be brought for it at the common law; in which the party injured shall recover his damages: Or he may bring an action of trespass; which kind of action hath now generally succeeded into the place of appeals in smaller offences not capital. 2 Haw. 157—160.

7. It doth not feem, that in maining there may be accessaries

after the fact. 2 Haw. 311.

For maining of cattle, fee title Cattle.

Mainpzize. See Bail.

## Maintenance.

BUYING of titles belongeth not to this place, but is treated of under a title of its own.

I. Of maintenance in general.

II. Of champerty in particular.

III. Of embracery in particular.

### I. Of maintenance in general.

Concerning which I will shew,

i. What it is.

ii. How punishable by the common law.

iii. How by statute.

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#### i. What it is.

1. Maintenance (manu tenere) is an unlawful taking in hand or upholding of quarrels or fides, to the disturbance or hindrance of common right. 1 Haw. 249.

2. And it is twofold;

One in the country; as where one affifts another in his pretenfions to certain lands, by taking or holding the possession of them for him by force or subtilty; or where one stirs up quarrels, and suits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not; but it is said not to be actionable. 1 Haw. 249.

Another in the courts of justice; where one officiously intermeddles in a fuit depending in any such court, which no way belongs to him, by affilting either party with money or otherwise, in the

profecution or defence of any fuch fuit. 1 Haw. 249.

3. Of this fecond kind of maintenance, there are three spe-

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First, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of maintenance:

Secondly, where one maintains one fide, to have part of the

thing in fuit; which is called champerty:

Thirdly, where one laboureth a jury; which is called embra-

cery. 1 Haw. 249.

4. But it feemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, church-yard, or common, by the same title, they may maintain one another in a suit relating to the same. I Haw. 252.

5. Also, that whoever is any way of kin or affinity to the party, may counsel and assist him, but that he cannot justify the laying out any of his own money in the cause, unless he be either

father, or son, or heir apparent. 1 Haw. 252.

6. Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit. 1 Haw. 253.

## ii. How punishable by the common law.

It feemeth that all maintenance is not only malum prohibitum by flatute, but is also malum in se, and strictly prohibited by the common law, as having a manifest tendency to oppression; and therefore it is said, that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiss, but also that they may be indicted as offenders against publick justice, and adjudged thereupon to such sine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth, that a court of record may Vol. II.

# Maintenance.

commit a man for an act of maintenance done in the face of the court. 2 Infl. 212. 1 Haw. 255.

### iii. How by statute.

1. By the 1 Ed. 3. st. 2. c. 14. No person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.

2. And by the 20 Ed. 3. c. 4. None shall take in hand quarrels, other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in

disturbance of law, and hindrance of right.

3. And by the I R. z. c. 4. None shall take or sustain any quarrel by maintenance in the country, on pain, if he is a great officer, as the king by advice of the lords shall ordain; if he is a lesser officer, he shall forfeit his office, and he imprisoned and ransomed at the king's will; and all other persons, on pain of imprisonment, and ransom at the king's will.

4. And by the 32 H. 8. c. 9. No person shall unlawfully maintain, or procure any unlawful maintenance, in any action, demand, or complaint, in any court bawing power to bold plea of lands; not shall unlawfully retain any person for maintenance of any plea, to the disturbance or bindrance of justice; on pain of 101. balf to the king, and half to bim that shall sue within one year. 1. 3, 6.

Unlawfully maintain] It feemeth that in an information on this statute, it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully. 1 Haw. 256.

Having power to hold plea of lands] It is faid to have been adjudged, that maintenance of a fuit in a spiritual court, is neither within this nor any other statute concerning maintenance. 1 Havin. 256.

To bold plea It hath been holden that in an information on this flatute, it is necessary to shew, that a plea was depending; and therefore that it is not sufficient to say that a bill was exhibited 1 Haw. 256.

## II. Of champerty in particular.

i. What it is, when has in men

ii. How punishable by the common law.

iii. How by statute.

## i. What it is.

Champerty (from campi parte) is the unlawful maintenance of a fuit, in consideration of some bargain to have part of the lands of thing in dispute, or part of the gains. 1 Haw. 256. 33 Ed. 1. ft. 2.

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Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a species of maintenance which is the genus. 2 Infl. 208.

### ii. How punishable by the common law.

Champerty was an offence at the common law, and as fuch is punishable in like manner as hath been expressed in treating of maintenance in general. 2 Inft. 208.

#### iii. How by statute.

1. By the 3 Ed. 1. c. 25. No officer of the king, by himfelf, nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made between them; and he that doth, shall be punished at the king's pleasure.

By covenant made That is, by agreement either by word or writing; for albeit in the common fense, a covenant is taken for an agreement by writing, yet in a larger fense it is taken (as it is here) for an agreement by writing or by word. 2 Inji. 209.

2. And by the 28 Ed. I. c. II. No person what sever, for to bave part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he hath purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.

3. And by the 33 Ed. 1. st. 3. Any person who shall take for maintenance, or the like bargain, any suit or plea against another ; be, and also they who consent thereunto, shall be imprisoned three years, and make fine at the king's pleasure.

4. And by the 1 R. 2. c. 9. A feeffment of lands, or gift of goods, for maintenance, shall be woid, and the person disseized shall recover the lands against the first disseizors, with double damages, without having any regard to such alienations.

Shall be void ] But it is faid, that it shall only be void with reard to him that hath right, and not between the feoffor and feoffee. 1 Inft. 369.

5. And by the 31 El. c. 5. The offence of champerty may be laid in any county, at the pleasure of the informer. 1.4.

## III. Of embracery in particular.

- 1. What it is.
- ii. How punishable by the common law.
- iii. How by statute.

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#### i. What it is.

1. It feems clear, that any attempt whatfoever co corrupt, or influence, or influence a jury, or any way to incline them to be more favourable to the one fide than to the other, by money, promifes, letters, threats, or perfuafions, is a proper act of embracery, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. I Haw. 259.

2. And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with, and therefore it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. 1 Haw. 259.

3. But any person who may justify any other act of maintenance, may safely labour a juror to appear and give a verdict according to his conscience; but no one whatsoever can justify the labouring a juror not to appear. I Haw. 260.

### ii. How punishable by the common law.

There is no doubt, but that offences of this kind, do subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law.

1 Haw. 260.

#### iii. How by statute.

1. By the 32 H. 8. c. 9. No person shall embrace any jurors; on pain of 101 half to the king, and half to him that shall sue within a year. s. 3, 6.

2. And by the 38 Ed. 1. st. 1. c. 12. If any juror shall take any thing to give his verdict; both he, and the embracer, shall for feit ten times as much, half to the king, and half to him that shall sue.

Upon which statute is founded the writ of Decies tantum.

#### Indictment for maintenance.

HE jurors for our lord the king upon their oath present, that A. O. late of —— in the county aforesaid, ycoman, on the —— day of —— in the —— year of the reign of —— with force and arms, at —— aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain suit, which was then dending in the court of our said lord the king, before the king hinself, between A. P. plaintiss, and A. D. defendant, in a plea of debt, on the behalf of the said A. P. against the said A. D. contrary to the form of the statute in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt of our said lord the king, and to the great damage of the said A. D. and against the peace of our said lord the king, his crown and dignity.

Malt.

Malt. See Ercise. Manslaughter. See Homicive. Mariners. See Seamen.

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# Marriage.

Py the 26 G. 2. c. 33. If any person shall solemnize matrimony, in any other place than a church or publick chapel sunless by special licence from the Archbishop of Canterbury); or without publication of bans, or licence, in a church or chapel; he shall son prosecution in 3 years) be adjudged guilty of selony, and transported for 14 years; and the matriage shall be void. s. 8, 9. But not to extend to Scotland, nor to the marriages of Quakers or Jews. s. 17, 18.

And if any person shall knowingly and wilfully insert, or cause to be inserted, in the register book, any false entry of any matter or thing relating to any marriage; or falsly make, alter, forge, or counterfeit, any such entry in the register, or any marriage licence, or cause the same to be done, or assent thereunto, or utter as true any such falsissed register, or copy thereof, or any such forged licence; he shall be guilty of selony without benefit of clergy. J. 16.

For other matters relating to this title, see Momen and Polygamy.

Paster. See Servant, Appzentice. Pealures. See Weights. Betal. See Pewter. Petheglin. See Excise.

# Militia.

THE militia of horse and foot, in England and Wales, are computed to be near 200000. Cham. Pr. St. 129.

Concerning whom we will treat in the following order:

I. Of the appointing lieutenants and deputy lieutenants.

II. Constituting inferior officers.

III. Persons chargeable to find soldiers.

IV. Inlifting.

V. Mustering, training, and leading.

VI. Tropby money; for ammunition, carriages, and other necessaries.

VII. Power to fearch for arms.

VIII. Constables to be affisting.

IX. Punishment for desertion or disobedience.

X. Punishment for imbezilling borse or furniture.

XI. Officers pay.

XII. Soldiers pay.

XIII. Penalties bow recoverable.

XIV. Double costs.

## I. Of the appointing lieutenants and deputy lieutenants.

The king may iffue commissions to such persons as he shall think fit, to be lieutenants for the several counties, cities, and places.

13 6 14 C. z. c. 3. f. 2.

Which lieutenants shall present to his majesty the names of such persons as they shall think sit, to be deputy lieutenants; and upon his majesty's approbation of them, shall give them deputations accordingly: always understood, that the king have power to direct and order otherwise; and accordingly at his pleasure, may appoint and commissionate, or displace such officers. id.

And the faid deputy lieutenants shall obey such orders as they,

shall receive from the lieutenants. id. f. 13.

But no peer shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first before six of the privy council, or such others as shall be authorized by the king, take the oaths of allegiance and supremacy, and this oath following; I A. B. do declars and believe, that it is not lawful upon any pretence whatsoever, to take arms against the king; and that I do abbor that traiterous position, that arms may be taken by his authority against his person.

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And no person, under the degree of a peer, shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first take the faid oaths; which oaths, any one justice, of the county or place, may administer to such lieutenant as is not a peer; and the faid lieutenant, or any one such justice, may administer the same to the deputy lieutenants not being peers. id. f. 19.

## II. Constituting inferior officers.

The lieutenants may give commissions to such persons as they shall think fit, to be colonels, majors, captains, and other com-

mission officers. 13 & 14 C. 2. c. 3. s. 2.

Which officers likewise, before they shall be capable of acting, shall first take the said oaths; to be administred by the lieutenants, and in their absence, or by their directions, the deputy lieutenants, or any two of them. id. f. 19.

### III. Persons chargeable to find soldiers.

1. The lieutenants and deputies, or the major part of them Who chargeable then present, or in the absence of the lieutenant, the major part with horse, of the deputy lieutenants then present, which major part shall be three at least, shall have power to charge any person, in the county, city, or town corporate, where his estate lies, having respect unto, and not exceeding the following proportions; viz.

No person shall be charged within finding a horse, horseman, and arms, unless he have a revenue of 5001. a year in possession, or an estate of 6000 l. in goods or money, besides the furniture of his house; and so proportionably for a greater estate, as they shall see cause, and think reasonable. 13 & 14 C. 2. c. 3. s.

2. And they shall not charge any person with finding a foot Who chargeable foldier and arms, that hath not a yearly revenue of 50 l. in pos. with foot. fession, or a personal estate of 600 l. in goods or money, other than stock upon the ground; and after the said rate proportionably

for a greater or leffer revenue or estate. id.

But they may require the constables to furnish, at a reasonable time and place to be appointed, on a penalty not exceeding 40 s. so many sufficient arms, with wages and other incident charges, as they shall affess according to the said proportions, upon revenue under 50 l. a year, or on personal estates less than 600 l. And in order thereunto, if any person shall on demand resuse or neglect to provide a foot foldier or foldiers according to the proportions aforefaid, or to pay any sums of money whereat he shall be affested by a pound rate (according to a lift figned by the lieutenants and deputies or three of them) towards defraying the necessary charge in providing such arms as aforesaid, the constable by warrant may levy such fum by diffress and sale, rendring the overplus, charge of diffraining being first deducted: and the tenant shall pay the same, and deduct it out of his next rent; and in default thereof, his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. J. 4, 5.

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But no person having an estate of 200% a year, or personal estate of 2400% shall be charged with finding any foot. 15 C. 2. c. 4. f. 18.

3. And they may charge any person having an estate of 1001. a year, and under 2001. or who hath a personal estate of 12001. and under 24001. towards the sinding of foot or horse, as to them shall seem most expedient. 15 C. 2. c. 4. s. 18.

4. But they shall not charge any person with finding both horse and soot in the same county. 13 & 14 C. 2. c. 3. f. 3.

5. And they may impose the finding of horse, horseman, and arms; by joining two, three, or more persons together in the charge. 13 & 14 C. 2. c. 3. s. 4.

But no person not having 100 l. a year in possession in lands, leasehold or copyhold, or 1200 l. personal estate, shall be compellable to contribute in finding any horse and horseman. id. s. 5.

6. And no person chargeable to find a horse and horseman, or to be contributory thereunto, shall for the same estate be chargeable towards finding a foot soldier with arms, or contributory thereunto. 13 & 14 C. 2. c. 3. f. 4.

7. Where two or more are charged to find any horse or soot foldier and arms, three deputy lieutenants may appoint who shall find the same, and who shall be the contributors, and settle the sums to be paid by every contributor, in case the same contribution be not ascertained by agreement of the parties. 10 & 11 W.

8. And for the better discovery of the ability of the persons so to be assessed and charged, and of all misdemeanors tending to the hindrance of the service, they may examine on oath such persons as they shall judge necessary or convenient, or shall be produced by the party charged or accused, other than the persons themselves to be assessed or accused. 13 & 14 C. 2 c. 11.

9. And they may hear complaints, and give redrefs, according

to the merits of the cause. 13 & 14 C. 2. c. 3. f. 5.

10. No peer shall be charged otherwise than as follows; viz. the king may iffue out commissions under the great seal, to so many peers (not fewer than 12) as he shall think fit; who, or any 5 of them, shall have power to assess all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following), and to execute all the powers of this act, as well for laying affeffments, as imposing of penalties (imprilonment only excepted). Which affeffment or charge fo made, and penalties imposed, shall be certified to the lieutenants. And in case of default in performance of any thing to be done or paid by any peer, the lieutenants and deputies, or any three of them, may cause distresses to be taken in the lands of such defaulter; and if fatisfaction shall not be made in one week after such distress taken, then the same to be fold: And if a tenant be distrained, he may deduct the sum levied out of his next rent. 13 & 14 C. 2. c. 3. J. 33.

11. Every commissioned foot officer shall be exempted from finding, or contributing to find, any horse or foot soldier, for his whole estate, if it is but charged with one horse, or a less charge,

Who may be charged either with horse or foot.

None chargeable with both horse and foot.

Two or more may be charged together.

Person chargeable with horse, not to be charged with soot.

Who shall find, and who contribute.

Perfors may be examined on oath.

Hearing and determining complaints.

Peers how to be charged.

Officer how chargeable.

or for fuch part of his estate as is charged with one horse, if his whole estate be charged with a greater charge than one horse in the county or lieutenancy where he fo ferves as a foot officer, in respect of the expence which the said employment doth necessarily

engage him in. 15 C. 2. c. 4. f. 9.

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12. Where any papift, reputed papift, or other person resusing Papifts how to take the oaths, is chargeable in respect of his estate, the lieute-be charged. nant, or in his absence the deputies, or three of them, may appoint fuch person as they shall think most meet, to furnish the fame; and may charge the fame estate with the payment of the yearly fum of 81. for a horse, horseman, and arms, and of 30 s. for a foot foldier and arms. And if he shall not pay the same on demand, they may by their warrant levy the same by distress and fale of the goods of fuch person, or of his tenants, rendring the overplus, all necessary charges in levying thereof being first deducted; and fuch tenant shall deduct the same out of his rent, 10 8 11 W. c. 12. f. 2.

13. Where any person shall be charged in the county, city, or Persons residing place, where he doth not reside, they shall fend notice of the ty, how to be charge, if he have any land in his own occupation, to fuch per-charged, fon as he employs as his fervant in managing the same; and if all his estate be let to farm, then to one or two of the most sufficient tenants; who shall forthwith, with all convenient speed, convey the same to their master or landlord; and in such time as shall be appointed, bring an account of his answer: And on neglect or refusal of the landlord, to provide such horse or foot, as is duly charged upon him, for the yearly rent referved upon every demise or other grant, and not otherwise, within the time limited; then the tenant shall provide and do, as the landlord in that behalf ought to have done: And if the tenant shall refuse or neglect, within the time limited; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, may levy by their warrant all fuch penalties as are appointed by this act, by diffress and sale of the offender's goods. 13 6 14 C. 2.

And the tenant may defalk out of his next rent, all fuch money as he shall necessarily lay out in providing the same, or shall be levied upon him by diffress for any default; unless the landlord shall make it appear, in two months after such levying, before the lieutenant, or in his absence, or by his direction, the deputies or any two of them, that the default and penalty was occasioned

by the tenant's wilful neglect. id. f. 17.

But this shall not avoid any covenant between landlord and tenant, concerning the finding horses or arms, or the bearing of any charges by any tenant; but all charges shall be born by such

tenant, according to the agreement. id. s. 29.

14. If any person shall refuse or neglect, by a reasonable time Penalty on perto be appointed, to provide such horse, horseman, arms, and some not furother furniture, or to pay fuch fum towards providing the fame nifhing. as aforesaid; the lieutenants and deputies, or three of them, may inflict a penalty on such person not exceeding 201. and by their Warrant may levy such sum, or the value of such horse, arms,

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# Militia.

and furniture, and such penalty inflicted, by distress and sale, rendring the overplus, all necessary charge in levying thereof being first deducted; the same to be employed to the uses in default whereof the same was imposed. 13 & 14 C. 2. c. 3. f. 9.

And if any person shall refuse or neglect, by a reasonable time to be appointed, to provide and furnish such soot soldier and arms, as shall be charged upon him; the lieutenants and deputies, or three of them, may inslict a penalty not exceeding 5% to be employed to the uses in default whereof it was imposed: And the constable, by warrant for that purpose, may levy such sum by distress and sale, rendring the overplus, charges of distraining being first deducted; and the tenant shall pay the same, and deduct it out of his next rent, and in default thereof his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. f. 3, 5.

And if any person charged as a contributor, being an inhabi-

And if any person charged as a contributor, being an inhabitant, shall refuse to pay his proportion on demand; or if he be not an inhabitant, if his tenant shall not pay the same upon demand; three deputy lieutenants by their warrant may levy the same by distress and sale, rendring the overplus, all necessary charge in levying thereof being first deducted; and such tenant may deduct the same out of his rent. 10 & 11 W. c. 12. s. 3.

15. But no person charged with the finding horse or foot, or with contributing thereunto; shall be compellable to serve in person, but may find one to serve for him, to be approved by the captain; subject nevertheless to be altered upon appeal to the lieutenant, or in his absence to two deputy lieutenants. 13 & 14 C. 2.

### IV. Inlisting.

Every man who shall serve in his own person, or such person as shall be accepted in his stead, shall at the next muster of his troop or company, give in his name and place of abode, unto such person as the lieutenant, or in his absence, or by his direction, any two deputy lieutenants, shall appoint; to the end that the same may be listed. 13 & 14 C. 2. c. 3. s. 25.

But he shall not be capable of acting as a soldier, unless he first take the said oaths abovementioned, to be administred by the lieutenant, or in his absence, or by his direction, the deputy lieute-

nants, or any two of them. id. f. 19.

## V. Mustering, training, and leading.

Power to raife and lead.

1. By the 13 & 14 C. 2. c. 3. The lieutenants shall have power to call together the militia, and to arm and array then, and form them into companies, troops, and regiments, and in case of insurrection, rebellion, or invasion, them to lead, conduct, and employed, as well within the several counties, cities, and places for which they shall be commissioned respectively, as also into any other counties and places, for the suppressing of all such insurrections and rebellions, and repelling of invasions, as may happen

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to be, according as they shall receive directions from his majesty.

And by the 15 C. 2. c. 4. The lieutenants, and in their absence, or by their directions, the deputy lieutenants, or two of them, shall have power to lead, train, and exercise, or by warrant under their hands and feals, cause to be led, trained, and exercised, the persons so raised, arrayed, and weaponed, f. 1.

But nothing herein shall extend to the giving any power for marching any subjects out of the realm, otherwise than by the laws of England ought to be done. 13 & 14 C. 2. c. 3, f. 32.

2. The ordinary times for training, exercifing, and mustering, Time of musterhall be these; The general muster and exercise of regiments, not ing. above once a year; The training and exercifing of fingle companies, not above four times a year, unless special directions be given by the king or his privy council; And such single companies and troops shall not at any one time be continued in exercise above the space of two days; And at a general muster and exercise of regiments, no officer or foldier shall be constrained to stay above four days together from their habitations. id. f. 21.

3. At every fuch muster and exercise, every musqueteer shall Accourrements. bring with him half a pound of powder, and half a pound of bullets; and every musqueteer that shall serve with a match lock, shall bring with him 3 yards of match; and every horseman shall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which shall be at the charge of him who provides the faid foldiers and arms: on pain of 5 s. for every

omission. 13 & 14 C. 2. c. 3. f. 21. 15 C. 2. c. 4. f. 7. And the arms offensive and defensive, with the furniture for horse, shall be as follows; the defensive arms, a back, breast, and pot, pistol proof; the offensive arms, a sword and a case of pillols, the barrels not under 14 inches in length; the furniture for the horse, a great saddle or pad with burrs and straps to affix the holsters unto, a bit and bridle, with a pectoral and crupper; for the foot, a musqueteer shall have a musket, the barrel not under 3 foot in length, and the gauge of the bore to be for 12 bulless to the pound, a collar of bandileers, with a fword; a pikeman to be armed with a pike of ash, not under 16 foot in length (head and foot included), with a back, breaft, head-piece, and Sword. 13 & 14 C. 2. c. 3. J. 21.

4. The muster master shall be an inhabitant of the county. Muster master.

15 C. 2. c. 4. f. 6.

And once a year each foldier shall pay to him such sum, not exceeding 1s. for a horseman, and 6d. for a footman, as the leutenants and deputies, or 3 of them, shall under their hands and seals direct; who shall have power to levy the same, by distress and sale of the goods of the persons charged to find such horseman, or foot foldier, unless the default be by the neglect of such soldier, who in that case shall be accountable for the same.

5. If any person charged shall refuse or neglect to send in, or Penalty on not deliver his horse, arms, or other furniture, at the beat of drum, furnishing. found of trumpet, or other fummons; the lieutenants and depu-

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ties, or three of them, may inflict a penalty not exceeding 5/, 10 be levied by diffress and sale, rendring the overplus, necessary 13 & 14 C. 2. 6.3. charges for levying being first deducted. J. 10.

Exception as to corporations.

6. Provided, that no officer or foldier of the militia, belonging to any city, borough. or town corporate, being a county of felf, or to any other corporation or port town, who have used to be mustered only within their own precincts, shall be compellable to appear out of fuch precincts, at any muster or exercise only, 13 & 14 C. 2. c. 3. f. 28.

#### VI. Trophy money; for ammunition, carriages, and other necessaries.

And for furnishing ammunition and other necessaries, the lieutenants and deputies, or three of them, shall have power to lay rates on the respective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month; assessment in each county, after the rate of 70000 l. a month, charged by the act of the 12 C. 2. c. 29. Which shall be affested collected, and paid by fuch persons, and according to such directions as shall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means, as are prescribed in the said act. 13 & 14 C. 2. c. 3. f. 7.

Which said act of the 12 C. 2. c. 29. having been long since

expired, is omitted out of the several editions of the statute at

large, but is supplied in Cay's abridgment, as follows:

The faid act of the 12 C. 2. c. 29. directs the sum of 70000l. a month to be raifed in like manner as by the act of the 12 C.2. c. 21. which act did direct the same to be raised, according to the proportions, and in fuch manner as by an ordinance of both houses made in his majesty's absence: Which ordinance was as followeth;

That is to fay, there shall be raised an affessment of 70000/

a month, in these proportions,

On the county of 1. d. 6 8 Gloucester -- 1626 6 8 Bedford -933 162 11 1 Berks City 1088 17 10 --- 1166 13 4 Buckingham - 1283 Hereford --- 1400 0 0 o Hertford -- 1102 10 Cambridge o | Huntington -622 4 6 Isle of Ely -367 10 Chester county - 770 0 3655 11 1 Kent -0 933 6 8 2 City -85 11 Lancaster Cornwall — 1633 Cumberland — 108 1088 17 8 6 8 Leicester -- 2722 4 10 Lincoln -108 0 0 1788 17 10 933 6 Middlefex -Derby - 4666 13 4 London -Devon 3003 15 1311 10 6 Northampton - 1400 0 0 Dorfet Town of Pool Nottingham -903 4 4 0 10 14 . 30 2 4 Town -4 153 14 3624 8 10 Norfolk -**—** 3500 0 Norwick

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Rutland —	272	4	6	Brecknock -	361	13	
Salop -	1322	4	4	Cardigan -	213	10	-
Stafford -	919	6	8	Carmarthen -	352	6	8
Litchfield -	14	0	0	Carnarvan -	202	4	.4
Somerfet -	2722	4	6	Denbigh -	272	4	6
Bristol -	171	2	2	Flint -	135		
Southampton -	2022	4	4	Glamorgan -	458		8
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	1565		6	Monmouth -	466		4
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And the commissioners shall cause the proportions to be equally affessed; and appoint assessors in each parish, who shall assess the same by a pound rate, according to all estates both real and personal, within the limits of their parishes.

And in case the way of affesting by a pound rate shall prove obfructive to the speedy bringing in of the affestment; the commissioners may direct the affestors to assess the same, according to the most just and usual way of rates practised in such places. Provided that the apportionment of the affestment shall not be drawn into precedent.

And no privileged place shall be exempted from the affest-

But nothing contained in this ordinance shall charge any master, fellow, or scholar of any college in either of the universities, or or Winchester, Eaton, or Westminster, or in any other free schools, or any reader, officer, or minister of the same, or of any hospitals, or almshouses, in respect of any profit arising in respect of the said places; nor charge any houses or lands belonging to Christ's hospital, Bartholomew, Bridewell, Thomas, and Bethlebem. But their tenants shall pay for so much as their leases are yearly worth, over and above the rents reserved.

Persons in London shall be affessed in the parishes where they dwell: And persons out of London, having any office in London, shall be affessed where they dwell.

And the affessors shall deliver one copy of the affessment unto the commissioners; who shall sign and seal two duplicates, and deliver one to the sub collectors, with warrant to collect; and deliver the other to the receiver general.

And if any difference arise between landlord and tenant concerning the rates, the commissioners shall settle the same; and persons aggrieved by being over rated, on complaint in six days after

demand

# Militia.

demand to the commissioners who allowed the assessment, may by them be relieved.

And if any controversy shall arise which concerns any of the commissioners, he shall withdraw.

On non-payment, the collectors may diffrain; and in the day time, taking with them the constable, may break open any house, cheft, or box where the goods are. And if any question arise upon the taking such diffress, the same shall be determined by the commissioners.

And if persons convey their goods, the commissioners may im. prison them (not being peers) till payment; and tenants may deduct the fame out of their rent.

And if the proportions be not fully paid, nor can be levied,

the commissioners may reassels.

And if any person shall wilfully neglect to persorm his duty in the execution of this ordinance, the commissioners may fine him, not exceeding 20 1. to be levied by diffress, and paid to the receiver general.

And the receiver general shall have I d. in the pound; the sub. collectors 1 d. the head collectors 1 d. and the commissionen

clerks I d.

But nothing herein shall be drawn into example, to the prejudice of the ancient rights belonging to the peers.

And so much concerning this ordinance of the two houses; in

which we may observe the land tax acts in embryo.

And the same power which the commissioners had by this ordinance, the lieutenants and deputy lieutenants feem to have by the act of the 13 & 14 C. 2. with which we do now proceed.

The lieutenants and deputies, or the chief officers upon the place, in the respective counties and places, may charge carts, waggons, wains, and horses, for the carrying of powder, match, bullet, and other materials, allowing 6 d. a mile outward only, to every fuch cart, waggon and wain with five horses, or fix oxen, and so proportionably; and for every horse employed out of waggon or cart 1 d. upon the marching of any regiment, company, or troop, on occasion of invasion, insurrection, or rebellion. 13 & 14 C. 2. c. 3. f. 8.

And the lieutenants shall appoint one or more treasurers, or clerks, for receiving and paying such monies when levied; of all which receipts and disbursements thereof, they shall every fix months give their accounts in writing upon oath, to the lieutenants and deputies, or 3 of them: which account shall be forthwith certified to the privy council, and a duplicate thereof shall be certified to the justices at the next fessions. id. f. 12.

Always provided, that the lieutenants or their deputies shall not issue warrants for raising any trophy money, till the justices in fessions shall have examined, stated, and allowed the accounts of the trophy money collected for any preceding year, and certified fuch examination under the hands and feals of four or more fuch jullices. 10 An. c. 25. J. 4.

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## VII. Power to fearch for arms.

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Power

The lieutenants, or two of their deputies, may by warrant under their hands and feals, imploy such persons as they shall think fit (of which a commissioned officer, and the constable or his deputy, or in their absence some other person bearing office in the parish where the search shall be, shall be two) to search for and feize all arms in the custody of any person, whom the lieutenants or two of their deputies shall judge dangerous to the peace of the kingdom, and to fecure the fame, and thereof to give account to the lieutenants, and in their absence, or by their directions, to the deputies, or two of them: Provided, that no fearch be made in any house between fun-fetting and fun rifing, other than in cities or their suburbs, and towns corporate, market towns, and houses within the bills of mortality, where they may fearch in the night time, if the warrant fo direct; and in case of resistance, to enter by force: And no dwelling house of a peer to be searched, but by immediate warrant from the king, or in the presence of the lieutenant or a deputy lieutenant: And in all places and houses whatfoever, where fearch is to be made, it shall be lawful in case of refistance, to enter by force. And the arms fo feized may be restored to the owners again, if the lieutenants, or in their absence as aforesaid, their deputies, or two of them, shall so think fit. 13 & 14 C. 2. c. 3. f. 14.

## VIII. Constables to be assisting.

All high constables, petty constables, and other officers and ministers, shall be aiding and assisting to the lieutenants and their deputies, or any of them. 13 & 14 C. 2. c. 3. f. 15.

## IX. Punishment for desertion or disobedience.

The yearly acts against mutiny and desertion do not extend to the militia.

But if any of the militia shall not appear and serve, compleatly furnished with horse and arms and other furnisher, at the beat of drum, sound of trumpet, or other summons; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him for sive days; or may instict a penalty, if he is a horseman, not exceeding 20s. and if a footman, not exceeding 10s. to be paid down without delay.

13 & 14 C. 2. c. 3. s. 10.

And the lieutenants or deputies, or chief officers upon the place, may imprison mutineers, and such soldiers as do not their duty at the days of muster and training; and may instict for punishment for every such offence, any pecuniary mulct not exceeding 5 s. or imprisonment not exceeding twenty days. 13 & 14 C. 2.

And such person duly listed, shall not be exchanged, or desert, or be discharged, but by the leave of the lieutenant, or two de-

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# Militia.

puties, of his captain, upon reasonable cause, first obtained in writing under hand and seal; on pain of 201. to be levied as other penalties; and for non payment, or want of distress, to be committed to the common gaol of the county, not exceeding three months. id. s. 25.

### X. Punishment for imbezilling borse or furniture.

If any person shall detain or imbezil his horse, arms, or furniture, the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him till he have made satisfaction.

## XI. Officers pay.

For fatisfaction of the officers for their pay, during such time (not exceeding one month) as they shall be with their soldiers in actual service, provision shall be made by the king out of the treasury. 13 & 14 C. 2. c. 3. s. 7.

And the lieutenants and deputies, or three of them, shall have power to dispose of so much of the said fourth part of the 70000 l. a month, to the inferior officers, for their pains and encouragement, as to them shall seem expedient. 15 C. 2. c.4.

#### XII. Soldiers pay.

Every person charged shall (on pain of 5s.) pay on demand 2s. 6d. a day to each trooper, and shall (on pain of 2s.) pay on demand 1s. a day to each foot soldier, for so many days as they shall be absent from their dwellings or callings, by occasion of muster or exercise, unless some certain agreement be made to the contrary before good witness; and the said penalty is to be paid to such soldier, to whom his pay was denied; the respective penalties to be demanded in fix weeks after default, or at or before the next muster or exercise, and not afterwards.

And in case of invasions, insurrections, or rebellions, whereby occasion shall be to draw out such foldiers into actual service; the persons so charged shall provide each their soldier with pay in hard not exceeding one month's pay, as shall be directed by the lieutenants, and in their absence, or by their directions, by the deputies or any two of them. 13 & 14 C. 2. c. 3. f. 7.

For the repayment whereof, provision shall be made by the king

out of the treasury. id

And in case a month's pay shall be provided and advanced as aforesaid, no person who shall have advanced his proportion thereof, shall be charged with any other like month's payment, until he shall have been reimbursed the said month's pay; and so from time to time, the month's pay by him sast before provided and advanced. id.

XIII. Penalties

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#### XIII. Penalties bow recoverable.

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Penalties

The forfeitures, penalties, and payments by the 15 C. 2. c. 4. not otherwise herein directed, may be recovered by warrant under the hands and seals of the lieutenants and deputies, or three of them, by distress and sale; and if sufficient distress cannot be found, then the party to be imprisoned till satisfaction shall be made. 15 C. 2. c. 4. f. 16.

#### XIV. Double costs.

Persons sued on either of the acts of the 13 & 14 C. 2. c. 3. or 15 C. 2. c. 4. may plead the general issue, and have double costs. And the action must be commenced in six months, and in the proper county. 15 C. 2. c. 4. f. 13, 14.

# Miller.

BY an ancient ordinance, Hawk. Stat. V. 1. p. 181. The toll of a mill shall be taken according to the custom of the land, and according to the strength of the watercourse, either to the twentieth or four and twentieth corn.

And yet in some places the millers do claim and take the fixteenth part: and where the custom hath been so used time out of mind, perhaps it may be good and warrantable. Dalt. c. 112.

And Mr. Dalton fays, the miller ought to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meslin (which is wheat and rye mixed). And for malt, the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, for that malt is more easily ground than wheat or rye: But if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. Dalt. c. 112.

But, by Holt Ch. J. the toll of a mill must be regulated by cuflom; and if the miller takes more than the custom warrants, it is extortion: But if it is a new mill, there the miller is not restrained to any certain toll; but the persons who will have their corn ground there, must comply with the miller's demands; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. L. Raym. 149.

16 G. 2. K. and Wood. The defendant, being a miller, was indicted for changing corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a publick nature. But it was answered, that being a cheat in the way of trade, it concerned the Vol. II.

## Misdemeanoz.

publick, and therefore was indictable. And the court was unan-

mous not to quash it. Seff. Caf. V. 1. 217.

Altho' every larceny implies a trespass, and a selonious taking of the thing stolen; yet it hath been resolved, that even those who have the possession of goods by the delivery of the party, as a miller who has corn delivered to him to grind, may be guilty of felony by taking away part thereof with an intent to steal it. 1 Haw. 90.

Millers are not to be common buyers of any corn, to fell the same again, either in corn or meal; but ought only to serve for the grinding of corn that shall be brought to their mills. Dalt.

c. 112.

Minister. See Publick worthip. Piladventure. See homicide.

# Misdemeanoz.

THIS word in its usual acceptation is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. Bark.

Mispission of felony. See Felony. Cispission of treason. See Treason. Mittimus. See Commitment. Money. See Coin. Murder. See Homicide. Muster. See Soldiers, Militia.

# Dute.

HE whole learning relating to this title, will be comprehended in the explication of the statute of Westminster 1.

Notorious felons, and which openly be of evil name, and will not put themselves in inquests of selonies that men shall charge them with before the justices at the king's suit, shall have strong and hard imprisonment,

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prisonment, as they which refuse to stand to the common law of the land. But this is not to be understood of such prisoners as be taken of light suspicion. 3 Ed. 1. C. 12.

Felons] This statute extendeth not to treason, which is the highest offence; nor to petit larceny, which is of all selonies the lowest: but if a man stand obstinately mute upon an arraignment of treason or petit larceny, he shall have the like judgment as if he had confessed the indictment. 2 Inst. 177. 2 Hazv. 329.

This word felons extendeth as well to women, as to men.

2 Inft. 177.

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Notorious, and epenly of evil fame] Therefore no person shall be put to this punishment, unless the matter be evident or proveable, which it is the duty of the judge to look unto, and to examine the evidence which proves the prisoner guilty of the fact, before he proceed to the judgment of pain fort & dure. 2 Inst. 177. 2 Haw. 330.

And will not put themselves in inquests] This is called standing mute. Now a man may stand mute two manner of ways:

First, when he stands mute without speaking of any thing; and then the court shall ex officio inquire by the oath of any 12 persons that happen to be present, whether he do so of malice, or by the act of god; and if it be found that it was by the act of god, then the judges of the court (who are always to be of counsel with the prisoner to give him law and justice) ought to inquire touching all those points which he might possibly plead for himself, as whether a felony were done, whether he be the same person that is indicted for it, whether he did it, and whether he hath any matter to alledge for his discharge; and such inquiry shall be made, not by an inquest of office, but by a jury returned by the sheriff, in the fame manner as if the defendant had actually pleaded; for fince it is not his own fault that he did not so plead, there is no reason why his trial should be in a more loose and summary manner, or any way less regular or solemn, than if he had so pleaded. 2 Inst. 178. 2 Haw. 327, 328. 2 H. H. 317.

But what if all this be found against the prisoner, what shall be done?—Whether judgment of death shall be given against him, though he never pleaded, seems yet undetermined. 2 H. H.

217

But after a man hath confessed himself guilty, or pleaded and put himself upon his country, he shall not afterwards be demeaned as one that stands mute, in respect of his subsequent slence; but the jury shall be charged, and the trial shall proceed, and the like judgment shall be given as in common cases. 2 Haw. 327.

Also if the person become mute, and not by the act of god, as by cutting out his own tongue, he shall forthwith be put to his

penance. 2 Inft. 178.

Another kind of mute is, when the prisoner can speak, and perhaps pleadeth not guilty, or pleadeth a plea in law, and will not conclude to the inquest according to this act, that is, to be tried

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by god and the country; then this act is sufficient warrant, if the cause be evident or probable, to put him to his penance: But if he demur in law, and it be adjudged against him, he shall have judgment to be hanged; and tho' by his demurrer he refuse to put himself upon the inquest according to the letter of this act, yet forasmuch as he is out of the reason of this act, for that he refufeth not the trial of the common law, the demurrer being allow. ed to him by law, and to be tried by the judges, he shall not be put to his penance, but have judgment to be hanged, and not have pain fort & dure. 2 Inst. 178.

At the king's fuit ] This act speaketh only of indictments at the fuit of the king; but the judgment of pain fort & dure was at the common law, both in indictments and appeals. 2 Inft. 177.

Shall have strong and hard imprisonment | Soient mises en la prifon fort & dure: The judgment in this case is, that the man or woman shall be remanded to the prison, and laid there in some low and dark room, where they shall lie naked on the bare earth without any litter, rushes, or other cloathing, and without any garment about them, but fomething to cover their privy parts, and that they shall lie upon their backs, their heads uncovered and their feet, and one arm shall be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner shall be done with their legs, and there shall be laid upon their bodies iron and stone, so much as they may bear and more, and the next day following they shall have 3 morsels of barley bread without any drink, and the second day they shall drink thrice of the water that is next to the house of the prison (except running water) without any bread, and this shall be their diet until they be dead. So as upon the matter they shall die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment is, because they refuse to stand to the common law of the land. 2 Inft. 178, 179.

Which punishment being fo fevere, Lord Hale advises, that it be not given too hastily, but that the prisoner be not only thrice admonished, but also have some convenient respite, as until the afternoon, to bethink himself, if the arraignment be in the morning; or till the next morning, if the arraignment be in the afternoon: and that the judgment it felf be diffinely read to him, that he may know his danger before his final refusal, with due admo-

nition not to destroy himself. 2 H. H. 320.

And it is faid to be the practice of Newgate sessions, where a prisoner refuses to plead, to endeavour to compel him to do it, by tying his thumbs together with whip-cord, and drawing them together by the strength of two men, to give him a taste of the pain to be endured, if he will not comply. 2 Haw. 331.

And the judgment be given of pain fort & dure, yet if the offence laid in the indictment be within clergy, his clergy shall be allowed him; and tho' in strictness of law the prisoner ought to pray it, yet it is the duty of the judge to allow it, tho' not prayed, and that as well after judgment pronounced as before. 2 H. H. 320, 321.

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And as to the case how far he is intitled to his clergy, it is enacted by the 3 W. c. 9. that if any person be indicted of any offence, for which by virtue of that or any former statute he is excluded from the benefit of clergy, if he had been convicted by verdict or confession; if he stand mute, or will not answer directly to the felony, or shall challenge peremptorily above 20 of the jury, he shall not be admitted to the benefit of clergy.

In which expression [by virtue of any former statute] offences excluded from the benefit of clergy by subsequent statutes seem not to be comprehended; and consequently persons standing mute on an indistment upon any such subsequent statute, shall have their clergy, if it is not otherwise specially provided by such sta-

tute. 2 Haw. 332.

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fhall be ught to prayed, 2 H. H. And as to the other consequences of standing mute, it is observable, that where a person standing mute is adjudged to his penance, and thereby prevents that attainder which otherwise he
might have incurred, he forfeits his chattels only, and not his
lands; and for this reason some have endured this punishment.

2 Haw. 331.

It doth not appear that the profecutor of an indictment for felony, where the defendant standeth mute, is intitled to the restitution of his goods, either by the common law, or by any statute.

2 Haw. 332.

But this is not to be understood of such prisoners as shall be taken on light suspicion. But if they obstinately stand mute, it seemeth that they may be severely fined and imprisoned for the contempt. 2 Haw. 330.

Paval Stozes. See Stozes.

Bavigation. See Rivers.

Bredlewozk. See Buttons.

Pets. See Game.

Rews papers. See Stamps.

Pight walkers. See Surety.

Boblemen. See Peers.

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Bon confozmiss. See Dissenters.

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Blackmail.

ORASMUCH as many persons dwelling in Cumber. land, Northumberland, Westmorland, and Duresme, have been taken by force, and kept until ransomed; and whereas by reason of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other confideration, commonly called by the name of Black. mail, to divers men of name, friended and allied with divers in those parts, who are known to be great robbers and spoil-takers in the faid counties, to the end thereby to be by them freed, protect. ed, and kept in fafety; by reason whereof many are impoverished, and rapine much increased: It is therefore enacted, that whofoever shall without good authority take or detain any such perfons against their wills, to ransom them, or make a prey or spoil of their persons or goods, upon deadly feud, or otherwise; or shall be aiding therein; or whosoever shall take, receive, or carry any money, corn, cattle, or other confideration, commonly called Blackmail, for such protection; or shall burn any stack of com: he shall, on conviction at the affizes or fessions, be guilty of felony without benefit of clergy. 43 El. c. 13. f. 1, 2.

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And perfons outlawed in any of the faid counties for any such murder, robberies, burglaries, or other felonies, shall in two months be certified in writing by the clerk of the peace to all the sheriffs of all the said counties; and the said sheriffs shall proclaim them in Carlisle, Penreth, Cockermouth, Appulby, Kendal, Newcastle, Morpeth, Alnewick, Hexam, Duresme, Darlington, Bishop Awekland, Bernard Castle, and Berwick, and once a month in every their county courts, till they surrender; and the mayors shall proclaim them in every fair, and every fix weeks in the market; and persons relieving, or conferring with them, shall, on the like conviction, be imprisoned for fix months, and bound to

the good behaviour for a year. S. 3, 4, 5, 6.

Englishman comin Scotland.

Moss-troopers.

2. By the 7 J. c. 1. If an Englishman shall commit felony in mitting a felony Scotland, and then fly into England, the justices of affize or felfions may fend the offender into Scotland to be tried.

3. The justices of Northumberland and Cumberland, may make order in fessions, for charging the respective counties, for securing the fame against the moss-troopers (that is, thieves and robbers, who after having committed offences in the borders, do escape thro' the wastes and mosses); so as Northumberland be not charged above 500 l. nor Cumberland above 200 l. a year. And they may appoint a commander, with 30 men in Northumberland, and 12 men in Cumberland, to search for, pursue, and apprehend offen-13 & 14 C. 2. c. 22.

And the persons so employed shall be chosen in sessions yearly,

or every two years at the farthest. 29 & 30 C. 2. c. 2. And the fessions shall take security of the persons by them employed for preservation of the borders, to answer the damages fustained fustained by their neglect or default, and to pay the same in four months after proof made thereof in fessions by oath of one witness; so as the goods stolen be entred in one of the books to be kept for that purpose, in 48 hours after they be stolen or gone; and books shall be kept for that end in every market town in the faid counties, and in fuch other places, and by fuch perfons, as the sessions shall appoint. 29 & 30 C. 2. c. 2.

And by the 18 C. 2. c. 3. Great and notorious thieves and spoiltakers in the faid counties of Northumberland and Cumberland, shall fuffer death as felons without benefit of clergy; or may be tranf-

ported by order of the judges of affize, during life.

These three acts in this section, to wit, 13 & 14 C. 2. 18 C. 2. and 29 & 30 C. 2. are but temporary; and by the last continu-

ance 24 G. 2. c. 57, are of force to June 24. 1757, &c.

4. Before the above recited acts, the peace of the northern Border service. borders was maintained by the lords wardens of the Marches, by virtue of certain regulations agreed upon from time to time by commissioners appointed by the two crowns respectively: for the knowledge whereof Bishop Nicholson's Border laws may be confulted by the curious.

# Pusance.

I. What it is. II. How it may be removed.

III. How punished.

#### I. What it is.

Common nusance seems to be, an offence against the publick, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. 1 Haw. 197.

Annoyances to the prejudice of particular persons, are not punishable by a publick profecution as common nusances, but are left to be redressed by the private actions of the parties aggrieved

1 Haw. 197.

Where note a diversity between a private and a publick nusance: If it is a private nusance, he shall have his action upon his case, and recover his damages; but if it is a publick nusance, he shall not have an action upon his case, and this the law hath provided for avoiding of multiplicity of fuits, for if any one might have an action, all men might have the like: but the law for this common nusance hath provided an apt remedy, by presentment or indictment at the fuit of the king, in the behalf of all his subjects; unless any man hath a particular damage. as if he and his M 4

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m emamages Mained horse fall into a ditch made across a highway, whereby he received hurt and loss, there for this special damage which is not common to others, he shall have an action upon his case,

1 Inft. 56.

And from hence it clearly follows, that no indictment for a nufance can be good, which lays it to the damage of private persons only: as where it accuses a man of surcharging such a common; or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nusance of all the inhabitants of such a town; or of disturbing a watercourse running to such a mill, to the damage of such a person and his tenants, without saying of all the liege subjects of the king, I Haw. 197.

Yet it hath been faid, that an indictment of a common feeld is good, altho' it conclude to the common nusance of divers, instead of all, the king's subjects; perhaps for this reason (says Mr. Hawkins) because a common scold cannot but be a common nu-

fance. 1 Haw. 198.

And if the law be so in this case, why should not an indictment setting forth a nusance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude to the nusance of divers, without saying all the king's subjects? And perhaps the authorities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nusance was alledged, were a highway, or only a private way; and therefore that it shall be intended from the conclusion of the indictment, that it was a private way. I Haw. 198.

There is no doubt, but that common bawdy houses are indictable as common nusances; and it hath been said, that all common stages for rope dancers, and also all common gaming houses, are nusances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw great

numbers of disorderly persons. 1 Haw. 198.

Also it hath been holden, that a common playhouse may be a nusance, if it draw together such a number of coaches or people, as prove generally inconvenient to the places adjacent. I Haw.

Erecting a shed so near a man's house, that it stops up his lights is not a nusance for which an action will lie, unless the house is an ancient house, and the lights ancient lights. 2 Salk. 459.

Also stopping a prospect is not a nusance. 3 Salk. 247.

A gate erected in a highway, where none had been before, is

ommon nusance. 1 Haw. 199.

It hath been holden, that it is no common nusance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town: And surely the trade of a brewer is as necessary as that of a chandler; and yet it seems to

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be agreed, that a brewhouse erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nusance: And so in like case may a glass house, or a swine yard.

1 Haw. 199.

A person was indicted, for making great noises in the night with a speaking trumpet, to the disturbance of the neighbourhood; and it was held by the court to be a nusance. T. 12 G. K. and Smith. Str. 704.

But it hath been refolved, that neither an old, nor a new dove coat is a common nusance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his case against him. I Haw. 198.

#### II. How it may be removed.

It feemeth to be certain, that any one may pull down or other-wife destroy a common nusance, as a new gate, or even a new house erected in a highway, or the like; for if one whose estate is or may be prejudiced by a private nusance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entring into another's ground, and pulling down and destroying such a nusance, whether it were erected before or since he came to the estate, it cannot but follow a fortiori, that any one may lawfully destroy a common nusance: And as the law is now holden, it seems that in a plea, justifying the removal of the nusance, a man need not shew that he did as little damage as might be. 1 Hanv. 199.

But although he may remove the nusance, yet he cannot remove the materials, or convert them to his own use. Dalt. c. 50.

#### 111. How punished.

It is faid, that a common foold is punishable by being put into the cucking stool. I Haw. 200.

Note; cuck or guck in the Saxon tongue (according to Lord Coke) fignifieth to foold or brawl; taken from the bird cuckow or gukhaw: and ing in that language fignifieth water; because a foolding woman was for her punishment sowsed in the water. 3 left. 219. The common people in the northern parts of England, amongst whom the greatest remains of the ancient Saxon are to be found, pronounce it ducking flool; which perhaps may have sprung from the Belgick or Teutonick ducken, to dive under water; from whence also probably we denominate our duck the water sows! or rather, it is more agreeable to the analogy and progression of languages, to affert, that the sustantive duck is the original, and the verb made from thence; as much as to say, that to duck is to do as that sowl does.

And the may be convicted, without fetting forth the particulars in the indictment. 2 Haw. 227.

Nevertheless, the offence must be set forth with convenient certainty; and the indictment must conclude not only against the

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## Dusance.

peace, but to the common nusance of divers of his majesty's live Subjects. As in the case of K. and Margaret Cooper, H. 19 G. 2. She was convicted on an indictment, for being a common and turbulent brawler, and sower of discord amongst her quiet and bonest neighbours, so that she hath stirred, moved, and incited divers strifes, controversies, quarrels, and disputes, amongst his ma-jesty's liege people, against the peace, &c. It was moved in ar. rest of judgment, that the charge was too general, and did not, amount to being either a barrator or common fcold, which are the only instances in which a general charge will be sufficient It was likewise objected, that if the words did amount to a de. fcription of a fcold, yet it should be laid to be to the common nusance of her neighbours, for every degree of scolding is not And the court was of opinion, that the judgment ought to be arrested on both exceptions; for none of the words here used are the technical words, and it must be laid to be to the common nusance. Str. 1246.

There is no doubt, but that whoever is convicted of another nusance, may be fined and imprisoned; and it is said, that one convicted of a nusance done to the king's highway, may be commanded by the judgment to remove the nusance at his own costs: and it seemeth to be reasonable, that those who are convicted of any other common nusance, should also have the like indement.

judgment. 1 Haw. 200. Str. 686.

And the defendant shall not be allowed to make any objections against the indictment, until he hath pleaded to it. Dell. c. 66.

And the court never admits a person convicted of a nusance, to a small fine, until proof is made of the nusance being removed.

Dalt. c. 66.

A master is indictable for a nusance done by his servant. L. Raym. 264.

All common nusances are indictable not only at the sessions, but also in the torn and leet. 2 Haw. 67.

An act of general pardon only discharges the fine, but not the

abatement of the nusance. 2 Salk. 458.

There are many offences by particular statutes declared to be common nusances, which are treated of under their respective titles.

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# Daths.

I. Of oaths in general.

II. The common forms of oaths.

III. Quakers oaths.

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IV. Oaths of Infidels.

### I. Of oaths in general.

ATH is a corruption of the Saxon word coth. 3 Infl. Oath.

2. It is called a corporal oath, because the person lays his hand Corporal oath.

upon some part of the scriptures when he takes it. 3 Inft. 165.

3. If the oath be taken on the common prayer book, which Oath taken on thath the epiftles and gospels, it is good enough, and perjury upon the common the flatute may be affigned upon this oath. 2 Keb. 314.

4. The words, So help me god, in the common form of an so help me god, oath, perhaps may have been first used in the very ancient manner of trial by battel in this kingdom, or at least are delivered with a peculiar emphasis in that solemnity; wherein the appellee lays his right hand on the book, and with his lest hand takes the appellant by the right, and swears to this effect, Hear this, thou who callest thy felf John by the name of baptism, that I who call my felf Thomas by the name of baptism, did not feloniously murder thy father W. by name—So help me god—(and then he kisses the book, and says) and this I will defend against thee by my body, as this court shall award. And so the appellant is sworn in like manner.

5. No ancient oath can be altered, or new oath imposed, Power of admiwithout an act of parliament; nor can any oath be admini-nistring an oathstress by any, that have not allowance by the common law time out of mind, or by an act of parliament. 2 Inst. 479.

3 Inft. 165.

And this is the reason why generally there is a clause in the statutes, giving power to the justices to this or the like effect [which oath such justice is hereby impowered to administer]; tho' it seems to be clear, that if an act impowers a justice, in a summary way to convict an offender by the oath of a witness, it doth (without any more) of necessity give him power to administer the oath to that witness; and that it is sufficiently implied in the words, and necessarily included in the power. For when the law grants any thing, that also is granted, without which the thing it self cannot be, 12 Co. 130, 131.

6. Where an oath is administred by a person that hath lawful Perjuryauthority to tender the same, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable

by the common law. 3 Inft. 166.

Therefore

# Daths.

Therefore if one call another a perjured man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling one a forfworn man, no action lies; because the forswearing may be extrajudicial. and confequently no perjury in law. 3 Inft. 166.

Of the oath of allegiance.

7. Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tourn or leet, and it was a high contempt to refuse it. 1 Inst. 68.

But the clergy were not obliged to take the oath of alle. giance till the reformation, any further than doing homage to the king for the lands held of him in right of the church.

1 H. H. 71, 72.

Lord Hale, speaking of the ancient oath of allegiance, which continued above 600 years, fays, that therein the prudence of the common law is observable, that it was short and plain, not intangled with long and intricate clauses or declarations, but that the fense of it was obvious to the most common understanding, and yet withal comprehensive of the whole duty of a subject to his prince. 1 H. H. 63. And from this the present form of the oath of allegiance hath not much varied.

Of the oath of supremacy. Of the oath of abjuration.

8. The oath of supremacy came in, upon abolishing the papal authority at the reformation. Read. Oath.

9. The oath of abjuration came in after the revolution; received some alterations in the first year of queen Anne; and again in the first year of king George the first; and so continues to this

Perhaps it might be wished, that it were made more applicable to Lord Hale's rule, in being more short and plain; there being in it feveral hard words, which probably many who take it do not well understand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have confulted.

Summoning per-

10. Two justices may summon by writing under hand and seal, sons to take the any person whom they shall suspect to be dangerous or disaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, supremacy, and abjuration; and if such person neglects or refuses to appear, then on due proof made on oath of the summons having been ferved on fuch person, or left at his dwelling house, or usual place of abode, with one of the family there, they shall certify the same to the next sessions, there to be recorded by the clerk of the peace. And if such person shall neglect or resuse to appear and take the oaths at the faid fessions (the name of such person being publickly read at the first meeting of the said sessions), then such person shall be esteemed and adjudged a popish recusant convict: and the fame shall be thence certified, by the clerk of the peace, into the chancery or king's bench, to be there record-1 G. ft. 2. c. 13. f. 10, 11.

> Whom they shall suspect It seemeth that a bare suspicion is not sufficient, but there should be some good cause of suspicion, and that the cause of suspicion is traversable. Read. Oath.

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Refuse—to take the oaths] A person cannot be said to refuse the oaths, unless they be read to him, or offered to be read. Read. Oath.

### II. The common forms of oaths.

1. The oath of allegiance, by the 1 G. ft. 2. c. 13. Oath of alle-I A. B. do fincerely promise and swear, that I will be faithful, giance.

and bear true allegiance to his majesty king George: So belp me god.

2. The oath of supremacy, by the 1 G. A. 2. c. 13. Oath of supremacy,

I A. B. do swear, that I do from my heart abbor, detest, and macy. abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclessa-stical or spiritual, within this realm: So help me god.

3. The oath of abjuration, by the 1 G. ft. 2. c. 13. Oath of abjura-

I A. B. do truly and fincerely acknowledge, profess, testify, and tion. declare in my conscience, before god and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his majesty's dominions thereunto belonging. And I do folemnly and fincerely declare, that I do believe in my conscience, that the person pretended to be prince of Wales, during the life of the late king James, and since his decease, pretending to be, and taking upon himself, the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain, bath not any right or title what soever, to the crown of this realm, or any other the dominions thereto belonging: And I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, that I will bear faith and true allegiance to his majesty king George, and him will defend, to the utmost of my power, against all traiterous conspiracies and attempts whatfoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour, to disclose and make known to his majesty, and his successors, all treasons and traiterous conspiracies which I shall know to be against him, or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain and defend the succession of the crown against bim the faid James, and all other perfons what foever; which fuccession, by an act, intitled, An act for the further limitation of the crown, and better fecuring the rights and liberties of the subject, is and stands limited to the princess Sophia, Electoress and dutchess dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express avords by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a christian: So help me god.

4. The

Declaration against transubfantiation.

4. The declaration against transabstantiation; by the 25 C. 2, c. 2. f. 9.

I A. B. do declare, that I do believe, that there is not any transubstantiation in the sacrament of the lord's supper or in the elements of bread and wine, at or after the consecration thereof by any person what foever.

Declaration against popery.

5. The declaration against popery; by the 30 C. 2. ft. 2. c. 1. I A. B. do folemnly and fincerely, in the presence of god, profess, testify, and declare, that I do believe, that in the sacrament of the lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person what soever: And that the invocation, or adoration of the wirgin Mary, or any other faint, and the facrifice of the mass, as they are now used in the church of Rome, are superfitious and idolatrous: And I do solemnly in the presence of god, profifs, testify, and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evafion, equivocation, or mental refervation what soever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am, or can be acquitted before god or man, or absolved of this declaration, or any part thereof, altho the pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null or woid from the beginning.

#### III. Quakers oaths.

Affirmation allowed.

1. In all cases wherein by any act of parliament an oath shall be allowed or required, the folemn affirmation of quakers shall be allowed instead of such oath; and that, altho' no express provision be made for that purpose in such act. 22 G. 2. c. 46.

Perjury incurred tion.

2. And if any person shall be lawfully convicted of wilful, by fale affirma- false, and corrupt affirming or declaring any matter or thing, which if fworn in the usual form would have amounted to wilful and corrupt perjury, he shall suffer as in cases of perjury. 8 G. c. 6. f. 2.

Affirmation not nal matters.

3. But no quaker shall by virtue hereof be qualified or perailowed in crimi- mitted to give evidence in any criminal cause, or serve on any juries, or bear any office or place of profit in the government. 7 & 8 W. c. 34. f. 6.

> In any criminal cause] By which words it seemeth, that a quaker shall not have sureties of the peace or good behaviour granted to him, or have a warrant to fearch for stolen goods, or sue the hundred for damages in case of robbery, and the like, upon his bare affirmation; but that in all fuch cases, an oath is first necessary

> Thus, T. 4 G. 2. K. and Wych. It was denied to read a quaker's affirmation, on a motion for an information for a misdemeanor.

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T. 7 G. Robins and Sayward. By the court, We cannot ground an attachment, for non performance of an award, on the affirmation of a quaker; for though it be in a fuit between party and party, yet it is a criminal profecution within the proviso of the statute. Str. 441.

H. 3 G. 2. Castell, widow, against Bambridge and Corbet. In an appeal of murder, a quaker was called for a witness, and it was insisted that this is a civil suit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But Raymond Ch. J. said, it was to this purpose a criminal proceeding, and therefore he could not be a witness. Str. 856.

4. The quakers folemn affirmation, instead of an oath, as finally General form of fettled by the 8 G. c. 6. is as follows; viz.

" I A. B. do folemnly, fincerely, and truly declare and affirm."

5. Instead of the oaths of allegiance and supremacy, quakers Declaration of shall be allowed to make the following declaration of sidelity: by fidelity. the 8 G. c. 6.

IA. B. do folemnly and fincerely promife and declare, that I will be true and faithful to king George; and do folemnly, fincerely, and truly profess, testify, and declare, that I do from my heart abbor, detest, and renounce, as impious and heretical, that wicked dostrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, presate, state, or potentate, bath or ought to have, any power, jurisaiction, superiority, preheminence, or authority, ecclessistical or siritual, within this realm.

6. And by the same act, they shall be allowed to take the effect Abjuration.

of the abjuration oath, in these words;

I A. B. do folemnly, fincerely, and truly acknowledge, profess, tellify, and declare, that king George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe the person pretended to be the prince of Wales, during the life of the late king James, and fince his decease, pretending to be, and taking upon himself the siile and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the stile and title of king of Great Britain, bath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to him. And I do folemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to bim will be faithful against all traiterous conspiracies and attempts whatfoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king George, and his successors, all treasons and traiterous conspiracies, which I shall know to be against him, or any of them. And I will be true and faithful to the succession of the crown against him the said James, and all other persons what soever, as the same is and stands settled by an act, intituled, An act declaring the rights and liberties of the subject, and settling the succession of the crown, to the late

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## Daths.

queen Anne, and the heirs of her body, being protestants; and as the same, by one other act, intituled, An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands settled and intailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princes sophia, Electores and dutches dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.

Profession of be-

7. The quakers profession of their belief; by the 1 W. c. 18.

1 A. B. profess faith in god the father, and in fesus Christ his eternal son, the true god, and in the holy spirit, one god blessed for evermore; and do acknowledge the holy scriptures of the old and new testament to be given by divine inspiration.

## IV. Oaths of Infidels.

Jews.

Mahometans.

1. A Jew is to be sworn on the old testament, and perjury upon the statute may be affigned upon this oath. 2 Keb. 314.

H. 2 G. 2. Gomez Serra and Munez. Upon error in debt upon a bond, the bail being both Jews, were suffered to put on their hats while they took the oath. Str. 821.

When Jews take the oath of abjuration, the words [on the true

faith of a christian] shall be omitted. 10 G. c. 4. f. 13.

2. At the council, Dec. 9. 1738. Present the two chief justices. On a complaint of Jacob Fachina against general Sahine, as governor of Gibraltar; Alderaman Ben Monso, a Moor, was produced as a witness, and sworn upon the Koran. Str. 1104.

H. 18 G. 2. In the chancery. Omichund against Barker. A

Mahometan was fworn upon the Koran. Str. 1104.

Concerning the taking of oaths for qualifying for offices, fee title Ditte.

And concerning the offences of profane curfing and swearing, fee title Dearing.

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## Dffice.

- I. Concerning the qualification for offices in corporations.
- II. Concerning the qualification for offices in general.
  - I. Qualification for offices in corporations.

1. N O person shall be placed, elected, or chosen, to any of. To receive the fice or place of mayor, alderman, recorder, bailiff, facrament, and take the oaths. town clerk, common council man, or other office of magistracy, place, or truft, or other employment, relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who shall not have received the facrament according to the rites of the church of England, within one year next before such election: and every person so placed or elected, shall take the oaths (I G. c. 13.) at the same time that the oath of office is taken; which shall be administred by those, who by charter or usage administer the oath of office; and in default of such, by two justices of the corporation, if there be any fuch; or otherwise by two justices of the county. And in default thereof, every such election and placing shall be void. 13 C. 2. ft. 2. c. 1. 5 G. c. 6. f. 1, 2.

And it hath been adjudged, to be no excuse, that the oaths

were not tendred. I Haw. 10.

Yet notwithstanding that the words of this act of the 13 C. z. (and also of the 25 C. 2. hereafter following) are so very strong, as to make the officer's election void to all intents and purposes, yet it hath been strongly holden, that the acts of a person under such a disability, being instated in such an office, and executing the same without any objection to his authority, may be valid as to strangers; for otherwise not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for another's fault, to which they are no way privy; and one chasm in a corporation, happening thro' the default of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his. I Haw. 10.

2. Which faid justices abovementioned shall cause memoran- Entring the dums to be made of fuch oaths taken before them, and delivered fame. once a year to the town clerk; or other register or clerk, who shall

enter the same in their books. 13 C. 2. ft. 2. c. 1.

3. But no such office shall be void on account of not having Limitation of received the facrament, unless the person shall be removed in fix actions. months, or unless profecution shall be commenced in fix months, and carried on without wilful delay. 5 G. c. 6. f. 3.

4. And by the 27 G. 2. c. 13. Persons who have omitted so to Clause of indemqualify, shall be indemnified, if they qualify on or before Nov. 28. nification.

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## Office.

And by the 28 G. 2. c. 3. Persons who have omitted to take the oath of office, or whose admissions to such office have not been duly stamped, shall be indemnissed, if they shall take the said oath, or provide admissions duly stamped, respectively, on or before Sep. 29. 1755.

And probably there may be some clause of indemnification in some future act, as there hath been from time to time heretofore,

#### II. Qualification for offices in general.

Taking the

1. Every person who shall be admitted into any office civil or military; or shall receive any pay by reason of any patent or grant from the king; or shall have any command or place of trust in England, or in the navy; or shall have any service or employment in the king's houshold; all ecclesiastical persons, heads and members of colleges, being of the foundation, or having any exhibition, of 18 years of age; and all persons teaching pupils; schoolmasters and ushers; preachers and teachers of separate congregations; high constables; and practifers of the law, --- shall (within fix kalendar months after such admission, 9 G. 2. c. 26. f. 3) take and subscribe the oaths of allegiance, supremacy, and abjuration, in one of the courts at Westminster, or at the quarter fessions; 1 G. ft. 2. c. 13. f. 2. between the hours of 9 and 12 in the forenoon, and no other; and during the time of taking thereof, all proceedings in the faid courts shall cease. 25 C. 2. c. 2. f. 2.

But this shall not extend to the office of tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of sorester, or keeper of any park, chase, warren, or game; or bailist of any manor or lands, nor to any like private offices. 1 G.

ft. 2. c. 13. f. 20.

Receiving the facrament.

2. Also every such person so to be admitted, shall receive the sacrament according to the usage of the church of England (within six kalendar months after his admittance. 9 G. 2. c. 26. f. 3.) in some publick church on the lord's day, immediately after divine service and sermon: And in the court where he takes the oaths, he shall first deliver a certificate of such his receiving the said sacrament, under the hands of the minister and churchwarden, and shall then make proof of the truth thereof by two witnesses on oath. All which shall be inquired of, and put upon record in the respective courts. 25 C. 2. c. 2. f. 2, 3.

3. They shall also, when they take the oaths, make and sub-scribe the declaration against transubstantiation. 25 C. 2. c. 2. f. 9.

4. Then the court shall enroll such persons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpose only; which shall be hung up in some publick place of such court during the whole time of its sitting, to be seen without see. 25 C. 2. c. 2. s. 6.

And the clerk of the peace shall have no more than 2 s. for the

entry. I G ft. 2. c. 13. f. 9.

Declaration against transubstantiation. Inrolling and fee. te

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But no feaman or foldier, under the degree of a commission or warrant officer, shall pay any fee for taking the oaths. 1 G. ft. 2.

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5. Every person, making default herein, shall be incapable to Penalty of exehold his office: and if he shall execute his office, after the faid unqualified. times are expired, he shall, upon conviction, be disabled to sue in any action, or to be guardian, or executor, or administrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and shall forfeit 500 l. to him who shall sue for the same. 25 C. 2. c. 2. f. 4, 5. 1 G. ft. 2. c. 13. f. 8.

6. But persons beyond the seas, shall not be disabled, if they Exception of shall qualify within fix months after their return. 9 G. 2. c. 26. persons beyond

7. Also no married woman, or person under 18 years of age, Feme coverts or non compos mentis, shall forfeit their office (other than such married woman during the life of her husband only) if they take the oaths, and do the other things required, within four months respectively, after the death of the husband, coming to the age of 18 years, and becoming of found mind. 25 C. 2. c. 2. s. 13.

8. Likewise, by the 28 G. 2. t. 24. Persons having omitted to General dause of qualify themselves in due time, shall be indemnified (if their place indemnification. is not filled up) provided they qualify on or before Nov. 28. 1755. And there is commonly an indemnifying clause to the same purpose, in some act, every two or three years.

In like manner, by the 20 G. 2. c. 48. Persons who had omit. ted to subscribe the declaration against popery, of the 30 C. 2. were indemnified, if they subscribed on or before Dec. 1. 1747.

9. Also, any person forfeiting his office, may take a new grant Persons disquathereof, on his taking the oaths, and conforming; provided it be lifted may take a new grant. not filled up before. 1 G. A. z. c. 13. f. 14.

10. In the universities, where persons shall not take the oaths, Persons disquaor shall not produce a certificate thereof, to be registred in their listed in the uniproper college, and others be not elected in their places within 12 months, the king shall appoint and nominate. 1 G. ft. 2. c. 13. J. 12, 13.

11. Perfons refuling the oaths, having any office of inheritance, offices of inheritance, ritance may be may appoint a deputy, fo as such deputy be approved by the king executed by de-under his privy fignet. 1 G. st. 2. c. 13. f. 18.

Note; The forms of the abovefaid oaths and declarations, are inserted in title Daths.

Dichards. See Wood. Overfeers of the poor. See Poor. Dutlawzy. See Pzacels. transported; of occes by papille; contempts in earlies

correspond of avaids, or non-payment of rods

clefished equity, in castes commenced for matters

Pamphlets. See Stamps. Paper. See Excise. Papists. See Popery. Parchment. See Stamps.

# Pardon.

Pardon, what.

A Pardon is a work of mercy, whereby the king, either before the attainder, fentence, or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical. 3 Inft. 233.

General pardon.

2. Pardons are either general or special: General, are by act of parliament; of which, if they are without exceptions, the court must take notice ex officio; but if there are exceptions therein, the party must aver that he is none of the persons excepted. 3 Inst. 233. Hale's Pl. 252.

By the act of 20 G. z. c. 52. for the king's general pardon; All persons are pardoned and discharged from all treasons, misprisions of treasons, felonies, treasonable and seditious words and libels, leasing making, misprisions of felony, offences whereby any person may be charged with the penalty of præmunire, rios, routs, offences, contempts, trespasses, entries, wrongs, deceits, misdemeanors, forseitures, penalties, sums of money, pains of death, pains corporal, and pains pecuniary, and generally from all other things, causes, quarrels, suits, judgments, and executions, not by this act excepted, which can by the king be pardoned, and which were done or incurred before June 15. 1747.-Excepted, persons in the service of the pretender, or of France or Spain; forging the king's feal; coining; violating the privileges of ambassadors; murders; petty treasons; poisonings; burning of houses, corn, hay, straw, wood; shooting at any perfon; fending threatning letters; piracy; destroying ships; offences in the navy or army; burglary; facrilege; 10bbery; fodomy; buggery; rape; perjury; subornation; forgery; felony in cases of bankruptcy; destroying banks of rivers and sea banks; firing coal pits; offences against the excise, customs, land tax, post office, stamp duties, duty on houses and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbezilling goods, and warlike stores of the crown; titles of quare impedit; incest; simony; dilapidations; first fruits; tenths; money due to the king from publick officers on account; persons transported; offences by papists; contempts in causes for non-performance of awards, or non payment of costs; contempts in ecclefiaftical courts, in causes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, feveral persons by

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And the like, for the most part, hath been enacted by former

flatutes of general pardon.

3. Special pardons, are either of course, as to persons convicted Special pardon. of manslaughter, or Je defendendo, and by divers statutes to those who shall discover their accomplices in several felonies; - or, of grace, which are by the king's charter, of which the court cannot take notice ex officio, but they must be pleaded.

4. By the 27 Ed. 3. c. 2. In every charter of the pardon of Pardon to confelony, the suggestion, and the name of him that maketh the suggestion, shall be comprized; and if it be found untrue, the charter

shall be disallowed.

5. And by the 13 R. 2. ft. 2. c. 1. No charter of pardon shall Pardon to specify be allowed for murder, treason, or rape, unless the offence be the offence.

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Lord Coke fays, the intention of this act was not, that the king should grant a pardon of murder by express name in the charter, but because the whole parliament conceived that he would never pardon murder by special name. And he says, he hath never feen any pardon of murder by any king of England, by express name. 2 Inft. 233, 236.

6. The king cannot pardon an offence before it is committed; The king can-

but fuch pardon is void. 2 Haw. 389.

7. As the release of the party will not bar an indictment at the is committed. suit of the king; so neither will a pardon by the king be any bar Cannot pardon

to an appeal at the suit of the party. 2 Haw. 392.

8. And in some cases even where the king is sole party, some Cannot pardon things there are which he cannot pardon; as for example, for all a nusance. common nusances, as for not repairing of bridges or highways, the fult (for avoiding multiplicity of fuits) is given to the king only, for redress and reformation thereof; but the king cannot pardon or discharge either the nusance, or the suit for the same; because such pardon would take away the only means of compelling a redress of it. But it hath been holden by some, that a pardon of such offence will save the party from any fine, for the 2 Haw. 391. time precedent to the pardon. 3 Inft. 237.

9. Thus also, if one be bound by recognizance to the king, Cannot discharge to keep the peace against another by name, and generally all other a recognizance. lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognizance, altho' it be made only to him, because it is for the benefit and safety of his subjects.

3 Inft. 238.

And the late of

10. Likewise, after an action popular is brought, as well for Cannot release thing as for the informer, according to any flature, the bine an information the king as for the informer, according to any statute, the king can qui tam. but discharge his own part, and cannot discharge the informer's part; because by bringing of the action, the informer hath an interest therein: but before the action brought, the king may difcharge the whole (unless it be provided to the contrary by the act) because the informer cannot bring an action or information originally for his part only, but must pursue the statute. And if the action be given to the party grieved, the king cannot discharge the iame. 3 Inft. 238.

not pardon an offence before it

And

## Pardon.

May discharge a fuit in the spiritual court.

11. It feems to have been always agreed, that the king's pardon will discharge any suit in the spiritual court ex officio: Also it feems to be fettled at this day, that it will discharge any suit in fuch court at the instance of the party, for the reformation of manners, or welfare of the foul, as for defamation, or laying violent hands on a clerk, and fuch like; for fuch fuits are in truth the fuits of the king, tho' profecuted by the party. Alfo, it feems to be agreed, that if the time to which such pardon hath relation, be prior to the award of costs to the party, it shall difcharge them: And it seems to be the general tenor of the books, that tho' it be subsequent to the award of the costs, yet if it be prior to the taxation of them, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 2 Haw. 394.

But it feems agreed, that a pardon shall not discharge a suit in the spiritual court, any more than in a temporal, for a matter of interest or property in the plaintist; as for tithes, legacies, matri-

monial contracts, and such like. 2 Haw. 394.

Doth not by re-

Person pardoned the good beha-VIOUT.

12. If the king release to a man all debts, this shall not disleasing a man re- charge his partner; but otherwise it is in case of a subject, for in lease his partner. that case the release to one dischargeth both. 3 Inft. 239.

13. When a pardon is pleaded by any one for felony, the jumay be bound to thices may at their discretion remand him to prison till he enter into recognizance, with two fureties, for his good behaviour, for any time not exceeding 7 years. 5 W. c. 13.

Pardon doth not reftore lands or goods forfeited.

14. It feems to be a fettled rule, that no pardon by the king, without express words of restitution, shall devest, either from the king or subject, an interest either in lands or goods, vested in them, by an attainder or conviction precedent. Yet it feems agreed, that a pardon prior to a conviction, shall prevent any forfeiture either of lands or goods. 2 Haw. 396.

Doth not reflore blood.

15. A pardon after the attainder, doth not restore the corrupthe corruption of tion of blood; for this cannot be restored but by act of parliament. 3 Inft. 233.

But as to iffue born after the pardon, it hath the effect of a re-

flitution of blood. 1 H. H. 358.

Doth reftore the credit.

16. It feems to be fettled at this day, that the pardon of a treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other confequences of his crime, that he may not only have an action for a scandal, in calling him traytor or felon, after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 Haw. 395.

But it feems to be the better opinion, that the pardon of a conviction of perjury doth not so restore the party to his credit, as to make him a good witness; because it would be an injury to the people in general, to make them subject to such a person's testi-

mony. I Ventr. 349.

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## Parliament.

1. DY the 2 G. 2. c. 24. which act is required to be read at Election. every Easter sessions, the returning officer of a member of the house of commons, shall after reading the writ, and before the election, take the oath against bribery, to be administred by one justice (or in his absence by three of the electors) and entred amongst the records of the sessions.

And by the 9 An. c. 5. The oath of the qualification of a candidate shall be administred by two justices, who shall certify the same in three months into the chancery or king's bench, on pain of 100 /. And thereupon no fee shall be paid, but 1 s. for the

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oath, 2 s. for the certificate, and 2 s. for the filing.

And by the 10 An. c. 23. The sheriff in 20 days after the election shall deliver the poll books upon oath to the clerk of the peace, to be kept among the records of the fessions; which oath shall be administred by the two next justices (12.)

2. A member of parliament shall have the privilege of parlia- Privilege. ment, not only for himself and his servants, to be freed from arrests, subpæna, citations, and the like; but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 Inft. 24, 25.

And by the 12 & 13 W. c. 3. and 11 G. 2. c. 24. Actions may be commenced and proceeded on, against peers or members of parliament, immediately after any disfolution, or prorogation for above 14 days, until they meet again:—Allowing nevertheless a reasonable time for their return from parliament; for their privilege existeth, not only during the time of their fitting, but for a reasonable time both before and after, for their going and return-Str. 985. Col. Pitt's case.

But it is faid to have been declared by a resolution of the house of commons, Mar. 23. 1696. that no member of that house hath any privilege against payment of any aids, supplies, or tax granted to his majesty, or any parish duties. Shaw's P. L. at the end.

## Partition.

Y the 8 & 9 W. c. 31. intituled, An act for the easier ob-B taining partitions of lands in coparceny, joint tenancy, and tenancy in common, it is enacted, that if the high sheriff cannot conveniently be present at the execution of any judgment in partition, in such case the under sheriff in presence of two justices may proceed to execution of the writ of partition.

> Partridge. See Game. Peace. See Surety. Pedlars. See Pawkers.

> > N 4

Deerg.

## peers.

Not confervators of the peace.

1. DUKES, earls, and barons are not conservators of the peace at common law; and have no more power as such, than mere private persons. 2 Haw 32.

2. The fafest way of proceeding against a peer, for sureties of

Sureties of the peace against them.

the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 Haw. 127.

Trial of peers.

Whether they

Whether they

shall be burnt in

may be out-

lawed.

the hand.

Enidence.

3. A nobleman must be tried by his peers: but this is to be understood only at the suit of the king, upon an indistment of high treason, petit treason, felony, or misprision thereof; but in case of a præmunire, riot, or the like, and generally for all other crimes out of parliament (unless otherwise specially provided for by statute, as it is in many instances), tho' it be at the suit of the king, he shall not be tried by his peers, but by the freeholders of the county. 3 Inst. 30. 2 Haw. 424.

4. Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken; otherwise he might take

advantage of his own contumacy. 3 Inst. 31.

5. Peers shall have the benefit of clergy for the first offence of felony, without burning in the hand. 1 Ed. 6. c. 12. f. 14.

6. A peer produced as a witness, ought to be sworn. 3 Keb.

Perry. See Ercite.

# Persury and subognation.

I. Of perjury and subornation by the common law.

II. Of perjury and subornation by the statute of the 5 El.

III. Of matters common to them both.

I. Of perjury and subornation by the common law.

Perjury at the common law.

1. PERJURY by the common law, feemeth to be a wiful false oath, by one who being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a matter material to the point in question, whether he be believed or not. 1 Haw. 172. 3 Inst. 164.

Wilful] The false oath alledged against him, should be proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake

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mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 Haw. 172.

False It is said not to be material, whether the fact which is sworn, be in it self true or false; for however the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false, inasmuch as he wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears, to proceed upon the credit of a deposition, which any stranger might make as well as he. I Hazv. 175.

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Being lawfully required] It seemeth clear, that no oath whatsoever, taken before persons acting merely in a private capacity;
or before those who take upon them to administer oaths of a publick nature, without legal authority; or before those who are legally authorized to administer some kinds of oaths, but not those
which happen to be taken before them; or even before those who
take upon them to administer justice by virtue of an authority
seemingly colourable, but in truth unwarranted and merely void,
— can amount to perjuries, but are altogether idle and of no
force. 1 Haw. 174.

In any judicial proceeding] For tho' an oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury; because such oaths are general and extrajudicial: but it serves for aggravation of the offence. Such are, general oaths given to officers or ministers of justice, the oath of fealty and allegiance, and such like. Thus if an officer commit extortion, it is against his general oath, but yet not perjury, because not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may serve for aggravation. 3 Inst. 166.

If a person calleth another perjured man, he may have his action upon his case, because it must be intended contrary to his oath in a judicial proceeding; but for calling him a forefroom man, no action doth lie, because the forswearing may be extrajudicial. 3 lnst. 166.

Swears abfolutely] For the deposition must be direct and absolute; and not, as he thinketh, or remembreth, or believeth, or the like. 3 Inst. 166.

In a matter material to the point in question.] For if it be not material, then tho' it be false, yet it is no perjury, because it concerneth not the point in issue, and therefore in effect it is extrajudicial. 3 Inst. 167.

But it is not necessary that it appear to what degree, the point in which a man is perjured, was material to the issue; for if it is but circumstantially material, it will be perjury. L. Raym. 258.

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing, an evi-

# Perjury and subognation.

dence may be very material, and yet it may not be full enough to prove directly the point in question. L. Raym. 889.

Whether he be believed or not ] It hath been holden, not to be material upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended, were in the event any way aggrieved by it or not; infomuch as this is not a profecution grounded on the damage of the party, but on the abuse of publick justice. 1 Haw. 177.

Subornation at common law.

2. Subornation of perjury, by the common law, seems to be an offence, in procuring a man to take a falfe oath, amounting to perjury, who actually taketh such oath. I Haw. 177.

But it seemeth clear, that if the person incited to take such an oath, do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished, not only by fine, but also by infamous corporal punishment. id.

Punishment of perjury and fubornation by the common law.

3. The punishment of perjury, and subornation of perjury by the common law, is restrained by the statute of the 5 El. hereafter following; that it shall not be less, than is inflicted by that

Power of justices of the peace therein.

4. Mr. Hawkins fays, it hath been of late fettled, that justices of the peace have no jurisdiction over perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inafmuch as the chief end of the institution of the office of these justices was, for the preservation of the peace against personal wrongs and open violence, and the word trespass (in the commission) in its most proper and natural sense, is taken for fuch kind of injuries, it shall be understood in that sense only, or at the most to extend to such other offences only, as have a direct and immediate tendency to cause such breaches of the peace; as libels, and fuch like, which on this account have been adjudged indictable before justices of the peace. 2 Haw. 40.

And in the case of K. and Bainton, E. 11 G. 2. An indictment at the quarter fessions for perjury at the common law, was quashed for want of jurisdiction; and was said to have been done so before, about three years ago, in the case of K. and Westiness. Str.

1088.

ornation on the 5 El. c. 9.

Perjury and fub- II. Of perjury and subornation by the statute of the

As to subornation of perjury, in the first place, Every perfor who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury; in any matter or cause depending in fuit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, er any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demesne court, hundred court, court baron, or court of chancery; or shall unlawfully and corruptly procure or suborn any witness which shall be form to testify in perpetuam rei memoriam,

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- shall forfeit 40 l. half to the king, and half to the party grieved who shall fue for the same. And if he has not lands or goods worth 401. be shall be imprisoned half a year, and stand on the pillory an hour in open market. And he shall be disabled to be a witness in any court of record.

And as to perjury, If any person, either by subornation or otherwife, shall wilfully and corruptly commit any wilful perjury, by his deposition in any the courts before mentioned, or being examined in perpetuam rei memoriam ; he shall forfeit 201. in like manner, and be imprisoned 6 months; and if he has not goods worth 201. he shall be fet on the pillory in the market place by the sheriff, and have both bis ears nailed. And be shall be for ever disabled to be a witness in any court of record.

And the judge of the court, where the perjury shall be, and the judges of affixe, and justices of the peace in sessions, may inquire, bear, and determine thereof, by inquisition, presentment, bill, or information, or other wife.

But this all foall not extend to any ecclefiaffical court.

Also this statute shall not restrain the authority of any judge. baving absolute power to punish perjury before the making thereof, but that every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wife as they might have done, and used to do, to all purfoses, so that they It not upon the offender less punishment, than is contained in the faid fatute. 5 El. c. 9.

Any witness] If the defendant perjureth himself in his answer in the chancery, exchequer chamber, or the like, he is not punishable by this statute; for it extendeth but to witnesses. 166.

By any swrit, action, bill, complaint, or information] It hath been resolved, that these words are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended, that the makers of the act, who inflict a greater penalty on subornation of perjury, than on the perjury it felf, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they effeemed the greater. 1 Haw. 179.

But it is to be observed, that perjury or subornation in an action depending by indictment, are not within this statute; but only in an action depending by writ, action, bill, complaint, or infor-3 Inft. 164.

Half to the party grieved ] It hath been collected from this clause, that no false oath is within the meaning of this statute, which doth not give some person a just cause of complaint: and upon this ground it hath been faid, that he who swears a thing which is true, but not known by him to be fo, is not within this statute; because howsoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be faid to give him a just cause of complaint,

# Persury and subognation.

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who would take advantage against another from his want of legal evidence to make out the justice of his cause. Also from the same ground it feemeth clearly to follow, that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it; for otherwise it cannot be said, that any one was grieved by it: and therefore that in every profecution upon this statute, it must appear upon the trial, that there was fuch a fuit depending, wherein the party might be prejudiced in the manner supposed. 1 Haw. 181.

Either by subornation, or otherwise It is not necessary to set forth in the indictment, whether the party took the false oath thro' the subornation of another, or without any such subornation, these words being only superfluity. 1 Haw. 179.

Wilfully and corruptly] These words are necessary in an indictment or action on this statute, and cannot be supplied by adding against the form of the statute, or by concluding and so a wilful and corrupt perjury did commit. 1 Haw. 178.

Justices in sessions] And one justice may bind the offender over to the fessions. Dalt. c. 70.

But because the prosecution upon this statute is more difficult than by indictment at the common law, offenders are feldom profecuted upon this statute, especially at the sessions; and it seems generally the fafer way to proceed by indictment at the common law, at the affizes, or in the court of king's bench.

Shall not restrain] From this it seemeth undoubtedly to follow, that the court of king's bench, &c. proceeding upon an indictment or information of perjury or subornation of perjury at the common law, may not only fet a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 Haw, 178.

### III. Of matters common to them both.

Judges may difor perjury.

1. The judge of affize (fitting the court, or within 24 hours rect profecutions after) may direct any witness, if there shall appear to him a reafonable cause, to be prosecuted for perjury; and may affign the party injured, or other person undertaking such prosecution, counfel, who are to do their duty gratis: and fuch profecution fo directed shall be carried on without any duty or fees whatsoever. And the clerk of affize, or other proper officer of the court, shall give gratis to the party injured, or profecutor, a certificate of the same being directed, together with the names of the counsel alfigned him: Which certificate shall be sufficient proof of such profecution being directed; provided that no fuch direction or certificate shall be given in evidence on the trial. 23 G. 2. c. 11.

2. And in every information or indictment for wilful and cor-On profecution for perjury, it rupt perjury, it man be innicione to let local the oath was taken shall be sufficient offence, and by what court, or before whom the oath was taken shall be sufficient offence, and by what court, or before whom the oath was taken to fet forth the (averring fuch court or person to have a competent authority to administer offence.

administer the same) together with the proper averment or averments to fallify the matter wherein the perjury is assigned, without fetting forth any part of the record or proceedings either in law or equity (other than as aforesaid), or the authority of the court or person before whom the perjury was committed. 23 G. 2. c. 11. f. 1.

3. And in informations or indictments for fubornation of per- Likewise on a jury, or for corrupt bargaining or contracting with others to com- profecution for mit wilful and corrupt perjury, it shall be sufficient to set forth the subornation. substance of the offence, without setting forth any part of the record or proceedings, or the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed. 23 G. 2. c. 11. f. 2.

4. The court generally will not quash an indictment for a Insufficient incrime of fo enormous a nature as perjury, for infufficiency in the dictment not caption or body of it, but will oblige the defendant either to plead quashed without pleading or de-

or demur to it. 2 Haw. 258. 5. And for a further punishment of perjury or subornation of Further punishperjury, it is enacted by the 2 G. 2. c. 25. (which act is made ment of perjury perpetual by the 9 G. 2. c. 18.) that besides the punishment al- or subornation. ready inflicted, the judge may order the offender to be fent to the house of correction, not exceeding 7 years, to be kept to hard labour; or otherwise to be transported for any term not exceeding

6. It seems that the court will not ordinarily at the prayer of Certiorari. the defendant grant a certiorari for the removal of an indictment of perjury; for fuch crime deserves all possible discountenance, and the certiorari might delay, if not wholly discourage the prosecution. 2 Haw. 287.

7. A person convicted of perjury is disabled from being a juror. Perjured person 2 Haw. 417. Or a witness. 2 Haw. 433.

8. Quakers making folemn affirmation wilfully and corruptly, Quakers. shall suffer as in cases of perjury. 8 G. c. 6. s. 2.

9. Perjury and subornation are excepted out of the general par- Pardou. don of the 20 G. 2. c. 52.

not to be a juror,

Personating bail. See 23ail.

## Petition.

DY the 13 C. 2. c. 5. No person shall solicite above 20 hands, B to any petition to the king, or either house of parliament, for alteration of matters established by law in church or state, unless the matter thereof hath been consented to by 3 or more justices of the county, or by the major part of the grand jury at the affizes or fessions; nor shall present any such petition accompanied with more than ten persons, on pain of a sum not exceeding 1001. and 3 months imprisonment, on conviction at the affizes or lessions in 6 months, and proved by two witnesses.

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# pewter and other metals.

But this shall not extend to debar any persons (not above ten in number), to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament.

Petit larceny. See Larceny. Petit treason. See Creason.

# Pewter and other metals.

Imported.

1. O person shall buy, or take by exchange (or otherwise take into or within this realm to the intent to sell the same, 33 H. 8. c. 4. f. 7.) any wares made out of the realm, of tin or mixed with tin, as dishes, sawcers, slagons, spoons, or any other thing made of tin or pewter; on pain of forseiting the same, and the value thereof, half to the king, and half to the sinder. 25 H. 8. c. 9. f. 1.

And the master and wardens of the pewterers, and where there are none, the head officer of the town, may appoint searchers,

who may feize the fame. f. 2.

And persons interrupting or disturbing the said seizure, shall forfeit 5 l. half to the king, and half to him that shall sue. 33

H. 8. c. 4. f. 8.

2. No person shall cast or work any pewter vessel or brass, but that it be as good fine metal as the pewter and brass wrought in London, and as by the statutes of the same ought to be; on pain of forfeiting the same, half to the king, and half to the finder. But this not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crasts or misteries. 19 H. 7. c. 6.

And no person shall make any hollow wares of pewter, to wit, salts and pots made of pewter called ley-metal, but after the assize of pewter and ley-metal within London; and the makers shall mark them with their own mark, that they may avow the same by them wrought; and the same not sufficiently made and wrought, and not marked, found in possession of the maker or seller, shall be forseited; and if the same be sold, the maker shall forseit the value thereof, half to the king, and half to the sinder or searcher.

And the master and wardens of the crast of pewterers, and where there are none such, the head and governors of the city or borough, may appoint searchers; and the justices at Mishaelmas sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king, and half to the searchers. id.

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ne by ought, , shall And in default of the master and wardens not searching, any person having sufficient knowledge in the said occupations, by oversight of the mayor or other head officer of cities or boroughs, may search. id.

3. If any untrue metal or workmanship of tin or pewter be Offering to sale. found in any wares brought to be sold, the mayor of London, and the master and wardens of the pewterers, may search the same in the said city; and in all other cities and towns where there are wardens, the mayors and wardens shall have like authority; and where there are no wardens, then the head officers of cities or towns shall appoint searchers; and if such new wares wrought of tin and pewter be found defective, and in the possession of the seller, the person putting them to sale shall forfeit the same, half to the king, and half to the searcher or finder. 4 H. 8. c. 7.

4. No person using the crasts of pewterer and brazier, shall Selling, where sell or change any pewter or brass, at any place, but only in open fair or market, or in his own dwelling house, except he be desired by the buyer of such ware; on pain of 10 l. half to the king, and half to him who shall seize or suc. 19 H. 7. c. 6. 25 H. 8. c. 9. f. 6.

5. Persons using the buying and selling of pewter or brass, False weights, who shall occupy any salse beams or weights, and every person using the same, shall forseit 20s. half to the king, and half to him that shall sue; and also the beams to him that shall seize them.

And if the offender be not sufficient to pay the forseiture, the mayor or other head officer, where he shall be found, shall put him in the stocks, and so keep him till the next market day next adjoining, and in the market place put him in the pillory all the market time. id.

6. No person shall carry over sea, any brass, copper, latten, Exportingbell metal, pan metal, gun metal, nor shroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forseiting double the value thereof (and 101 for every thousand weight, 2 & 3 Ed. 6. c. 37.) half to the king, and half to him that shall sue. 33 H. 8. c. 7.

Pheafants. See Game.

## Phylicians.

1. O recusant convict shall practise physick, nor use the Recusants not to trade of an apothecary, on pain of 100 l. 3 J. c. 5. practise physick.

2. Apothecaries within London and 7 miles thereof, and also Apothecary exapothecaries in any other place who have served 7 years apprenempted from ofticeship, shall be exempted from the office of constable, scavenger, since overseer of the poor, and all other parish, ward, and leet offices, and from being put on any jury or inquest. 6 W. c. 4.

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## Phylicians.

Surgeons ex-

3. By the 5 H. 8. c. 6. Surgeons shall be discharged of the empted from of- constableship, watch, and all manner of office bearing any armour, and also of all inquests and juries within London.

And by the 18 G. 2. c. 15. All freemen of the furgeons company in London, shall be exempted from the office of constable, scavenger, overseer of the poor, and other parish, ward, and leet offices, and from serving on juries and inquests. f. 10.

And Mr. Hawkins, speaking of the former of these statutes, fays, It seems that by the equity thereof, and the ancient custom of the realm, all furgeons have been allowed the like privilege; that is, whether in London or elsewhere. 2 Haw. 64.

Physicians ex-

4. By the 32 H. 8. c. 40. The prefident of the commonalty empted from of- and fellowship of the faculty of physick in London, and the commons and fellows of the fame, shall be discharged of watch and ward there, and shall not be chosen constable, or any other officer. f. 1.

Yet it feems to have been holden, that the equity of this act. doth not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge, as surgeons are said to have. 2 Haw. 64.

And it seemeth, that a practifing physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private; yet if he be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench. 2 Haw. 63.

Searching for drugs.

5. All justices, mayors, sheriffs, bailiffs, constables, and other officers in London, shall assist the president of the college of phycians, and persons by them authorized, in searching for faulty

apothecary wares. 1 Mar. Seff. 2. c. 9. f. 6.

Physician killing a patient.

6. If a physician gives a person a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a difease, and contrary to the expectation of the physician it kills him, this is no homicide; and the like of a surgeon. And I hold their opinion (fays lord Hale) to be erroneous, that think if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is felony; for physick and salves were before licensed physicians and surgeons; and therefore if they be not licensed according to the statute of the 3 H. 8. c. 11. or 14 H. 8. c. 5. they are subject to the penalties in the statutes, but god forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. These opinions therefore may serve to caution ignorant people, not to be too busy in this kind in tampering with physick, but are no safe rule for a judge or jury to go by. 1 H. H. 429.

> Pick-pocket. See Larceny. Pineons. See Bame.

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## Pillory and tumbrel.

1. DILLORY is derived from pilastre, a pillar; for it is a Pillory and tumwooden pillar, wherein the neck of the offender is put brel, what. and pressed: which kind of punishment is very ancient, and was

used by the Saxons. 3 Inft. 219.

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The tumbrel feemeth to have been the fame anciently with the ducking fool; an engine for the punishment of scolding women, by ducking them over head and ears in water, and especially in muddy or stinking water, according to the etymology of Lord Coke, who tells us, that the word tumbrel fignifieth a dung cart. Lamb. 61. 3 Inft. 219.

2. Every one that hath a leet or market, ought to have a pil- Who shall find lory and tumbrel to punish offenders; and it feems that a leet them. may be forfeited for not taking care to have a pillory and tumbrel.

3 Infl. 219. 2 Haw. 75.
3. They that have been adjudged to the pillory or tumbrel, Infamy of the are so infamous, that they shall not be received to be jurors or punishment.

witnesses. 3 Inft. 219.

4. And for that the judgment to the pillory or tumbrel doth Caution in inmake the delinquent infamous, the justices of the peace should be ficting it. well advised before they give judgment of any person to the pillory or tumbrel, unless they have good warrant for their jungment Fine and imprisonment, for offences fineable by them, is a fair and fure way. 3 Inft. 219.

. But by several statutes the punishment of the pillory is spe Inflicted by secially ordained; as in the case of bakers, forestallers, users of veral statutes.

falle weights, and many others.

## Plague.

A LL veffels, persons, and goods coming from any place, Quarentine from whence the king, with the advice of his privy enjoined. council, shall judge probable that the infection may be brought, shall be obliged to make their quarentine in such places, for such time, and in such manner as shall be directed by him, or by his order made in council, and notified by proclamation, or published in the gazette 26 G. 2. c. 6. J. 1.

2. And when the king shall make any orders concerning qua Orders for quarentine, and notify the same by proclamation, or in the gazette, rentine to be the same shall be publickly read the next Sunday, and the first Sunday in every month afterwards (during the time such orders shall continue) immediately after prayers, in all places fet apart for divire worship, within such places as shall be specified in such proc'amation or orders. id. f. 20.

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Watchmen to be appointed. 3. And the justices of the counties adjoining, or one of them, shall forthwith, when quarentine shall be appointed, cause watches to be kept by day and night, in the most proper and convenient places, within the several adjacent parishes; who shall not permit any person whatsoever to come on shore from, or go on board any ships under quarentine, except only such as shall have the charge of seeing the quarentine duly personned, or as shall be licensed by such person having charge of the quarentine. 9 An.

And if any superintendant of the quarentine, or watchman, shall neglect his duty, he shall be guilty of felony without benefit

of clergy. 26 G. 2. c. 6. f. 17.

Masters of ships

4. And if the plague shall appear on board any ship, being to the northward of Cape Finisterre, the master shall immediately proceed to the harbour of New Grimfby in Scilly; where he shall make known his case to some officer of the customs; who shall immediately acquaint some custom house officer of some near port of England; who shall with all possible speed send intelligence thereof to a fecretary of state: and the ship shall remain theretill his majesty's pleasure be known; nor shall any of the crew go on shore. But if he shall not be able to make the islands of Scilly, or shall be forced by weather or otherwise to go up either of the channels; he shall not enter any port, but remain in some open road, till he receives orders from his majesty, or his privy council; and shall prevent any of the crew from going out of the ship, and avoid all intercourse with other ships or persons. And the faid mafter, or any other person on board, who shall be disobedient herein, shall be guilty of felony without benefit of clergy; and may be tried where the offence shall be committed, or where he shall be apprehended. 26 G. 2. c. 6. f. 2.

Vessels to be

5. And when any country or place is infected, or when any order shall be made by the king concerning quarentine, as often as any vessel shall attempt to enter into any port, the principal officer of the customs there, or such person as shall be authorized to see quarentine performed, shall go off, or cause some other person to go off, to such vessel; who shall at a convenient di-Stance, demand of the commander, the name of the ship; the name of the commander; at what place the cargo was taken on board; what place the veffel touched at in her voyage; whether fuch places, or any, and which, were infected with the plague; how long the hath been in her passage; how many persons were on board when she set sail; whether any, and what persons, during the voyage, have been or are infected; how many died in the voyage, and of what distemper; what vessels he, or any of his company with his privity, went on board, or had any of their company come on board his ship, and to what place they belonged; and also the true contents of his lading, to the best of his knowledge: And if it shall appear on such examination, or otherwise, that any person on board is infected, or that such ship is obliged to perform quarentine; the officers of any of his majetty's ships of war, or of any forts or garrisons, and all other his mojesty's officers whom it may concern, and others whom they fhall shall call to their assistance, shall, on notice thereof, oblige such thip to repair to the place appointed for quarentine, be it by firing of guns, or other force: And if such vessel shall come from any place infected, or have any person on board infected, and the mafter shall conceal the same, he shall be guilty of felony without benefit of clergy; and if he shall not make a true discovery in any other of the particulars, he shall forfeit 200 l. half to the king, and half to him that shall fue. 26 G. 2. c. 6. f. 3.

6. And if any officer of the customs, or other officer, shall officer negneglect his duty herein; he shall forfeit his office, and 100 l. in lecting.

26 G. 2. c. 6. f. 11.

7. And the master, after his arrival at the place of quarentine, Master to deliver shall deliver on demand to the chief officer appointed to see qua- his credentials. rentine duly performed, such bill of health and manifest as he shall have received from any British consul, together with his logbook and journal; on pain of 500 l. in like manner. 26 G. 2.

8. And all persons, liable to perform quarentine, shall be sub- Obedience iaject to fuch orders as they shall receive from the officers autho-forced. rized to see it performed; who shall have power to inforce obedience, and in case of necessity to call others to their assistance.

26 G. 2. c. b. J. 9. q. And any officer of the customs, or others, directed to take Ships boats may care of the quarentine, may feize any boat belonging to fuch be feized. vessel, and detain the same till quarentine be performed. 9 An.

10. And if the commander of the ship shall go himself, or per- Penalty of quitmit any seaman or passenger to go on shore, or on board any other ting the ship. veffel, during the quarentine, without licence of the person having charge of the quarentine; the ship and tackle shall be forfeited to

the king. 9 An. c. 2.

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And if any person shall come on shore, or go aboard any other ship; the persons appointed for seeing quarentine duly performed, may compel him to return and continue during the quarentine: And fuch person so leaving such ship, and being thereof (after expiration of the quarentine) convicted by oath of one witness, before one justice near, shall forfeit not exceding 20 1. to be paid immediately to such justice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the parish where the conviction shall be; and in default of payment, he may commit him to the house of correction, to be kept to hard labour not exceeding one month. 9 An. c. 2.

And by the 26 G. 2. c. 6. If the master shall quit, or knowingly permit any perfon to quit the ship, by going on shore, or on board any other vessel, before the quarentine shall be per-or formed, unless in such cases as shall be permitted by the orders concerning quarentine; or if he shall not, in convenient time after notice, cause the vessel and lading to be conveyed to the place appointed for quarentine, he shall forfeit 500 l. half to the king, and half to him that shall sue: And if any person shall so quit such ship, all persons by any kind of sorce may compel him

to return; and he shall for such offence be imprisoned 6 months, and forfeit 2001. half to the king, and half to him that shall sue. 6.5.

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Persons going aboard.

11. And if any person shall go on board, and return from any ship, during the quarentine, without such licence; he may be compelled by the persons appointed as aforesaid, to return and continue on board during such quarentine; and the master of such ship shall there keep and maintain him. 9 An. c. 2.

In what case fmall vessels shall not be allowed to fail.

12. When any part of Great Britain, Ireland, Guernsey, Jer. fey, Alderney, Sark, or Man, France, Spain, Portugal, or the low countries shall be infected, the king by proclamation may prohibit all small boats and vessels under the burden of 20 tons, from failing out of port, till fecurity be first given by the master, to the fatisfaction of the principal officer of the customs, or chief magistrate of the port, by bond to the king with sureties, in the penalty of 300 l. that he shall not go to or touch at any place mentioned in the proclamation; and that the master and every mariner and passenger shall, during the time aforesaid, not go on board any other vessel at sea; and that he shall not permit any person to come on board such boat or vessel at sea; and shall not receive any goods out of any other vessel; for which bond no fee shall be taken. And if such boat or vessel shall sail before fuch fecurity given, the fame, together with the tackle and furniture, shall be forfeited to the king; and the master, and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witness, by one justice where the offender shall be found, shall forfeit 201. half to the informer, and half to the poor of the parish where the offender shall be found, by distress; and for want of sufficient distress to be committed to prifon for 3 months. 26 G. 2. c. 6. f. 19.

Lazarets to be appointed.

13. Whenever the king, with the advice and confent of parliament, shall direct lazarets to be provided, for receiving of perfons obliged to perform quarentine, or for airing of goods, it shall be lawful to erect the same, either in any waste grounds or commons, or where there are not sufficient, in the several grounds of any person whatsoever, not being a house, park, garden, orchard, yard, or planted walk, or avenue to a house, paying for the same as shall be agreed on between the persons interested, and any two persons appointed by the king under his fign manual; and if they cannot agree, then the faid two persons shall, 30 days before the fessions give to the occupier a notice in writing, describing the quantity of ground, and purporting that the confideration for the same will be settled by a jury at such sessions. And the justices there, on proof of such notice, shall charge the jury which shall attend there (or some other jury to be then and there impanelled and returned by the sheriff without fee) and cause to be fworn, well and truly to affefs the value of fuch grounds, to whom the parties may have their lawful challenges; and the verdict of the faid jury, and the judgment of the justices thereupon, shall be conclusive, and finally bind all parties; and thereupon the king shall hold such grounds for such term as he shall judge ne-

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ceffary, paying for the fame fuch rent or other confideration as shall be so assessed. 26 G. 2. c. 6. s. 6.

And the officers authorized to put in execution such orders as aforesaid, shall cause all persons obliged to perform quarentine, and all goods comprized in fuch orders, to repair or be conveyed to some of the said lazarets, or to such other places as shall be

provided according to fuch orders. id. f. 7.

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And if any person shall refuse or neglect to repair, within convenient time after notice, to the lazaret or other place appointed, or shall escape or attempt to escape from thence, before quarentine performed; the watchmen, and other perfons appointed to see quarentine performed, by force may compel him to repair or return hither: and every person so refusing or neglecting to repair thither, and also every person actually escaping, shall be guilty of felony without benefit of clergy. id. f. 8.

14. And if any person not infected, nor liable to perform qua- Persons entring rentine, shall enter any lazaret, or other such place, and shall re lazarets, not to turn or attempt to return, unless as permitted by such orders; the return till quawatchmen, or other persons appointed, by force may compel him ed. to return and perform quarentine: and if he shall actually escape before he hath performed the fame, he shall be guilty of felony

without benefit of clergy. id. f. 10.

15. And the mayor, head officers, and justices of the peace Assessment for of every city, borough, town corporate, and places privileged, relief of persons or any two of them, may affels every inhabitant, and all houses in infected of habitation, lands, tenements, and hereditaments, for the reasonable relief of persons infected with the plague, or inhabiting in infected houses, and levy the same by warrant; and if the party to whom the warrant is directed shall not find any goods to levy the fame; then upon return thereof, they shall by warrant cause the person to be arrested, and committed to gaol till he shall pay. 1 7. c. 31. s. 2, 3.

And if the inhabitants of such place shall find themselves unable to relieve all such persons, then on certificate thereof by the laid magistrates or two of them, to the justices of the county of or near the faid city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infeeled, at such weekly sums as they shall think reasonable, to be levied by their warrant by fale of goods, and in default thereof,

by imprisonment as aforesaid. id. f. 4.

And if the infection shall be in a town where there are no justices, or in a village or hamlet; then two justices of the county may affels the inhabitants of the county, within five miles of the place infected, at such weekly sums as they shall think fit, for the reasonable relief of places infected; to be levied by their warrant by fale of goods, and in default thereof, by imprisonment as aforefaid.

All which said taxes shall be certified at the next quarter sefsions, for such town or county respectively; and there they may order the same to continue, or be enlarged or extended to any other part of the county, or otherwise determined. f. 6.

Searchers for places infected.

Secreting goods

under quaren-

Plague.

Officer making default in levying the same, shall forfeit 10s, to be employed to the charitable uses aforesaid. f. 6. But it is not said how this penalty shall be levied.

16. And the justices, mayors, and other head officers, may appoint within their limits searchers, watchmen, examiners, keepers, and buriers for the places insected; and give them directions, and swear them for the performance thereof. 17. c. 31. f. 9.

17. If any person shall conceal from the officers of quarentine, or convey any letters or goods from any ship under quarentine, or from any lazaret; he shall be guilty of selony without benefit of clergy. 26 G. 2. c. 6. f. 18.

18. If any officer or other person shall embezil or damage any goods persorming quarentine; he shall pay treble damages, with still costs. 26 G. 2. c. 6. f. 11.

Discharge after quarentine performed.

Damaging goods.

19. After quarentine performed, and on proof thereof by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses, before the customer, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the vessel and every such person are free from insection; and after producing a certificate thereof signed by the

fection; and after producing a certificate thereof figned by the chief officer who superintended the quarentine; such officer of the customs, or justice, shall give a certificate thereof (gratis), and thereupon the vessel and every such person shall be liable to no further restraint. 26 G. 2. c. 6. f. 13, 14.

And all goods liable to quarentine shall be opened and aired, as by such orders shall be directed; and after such order hath been complied with, and a certificate thereof given by the chief officer appointed to superintend the quarentine and airing of such goods, and proof made thereof by the oaths of two witnesses, before the customer, comptroller, or collector of the next port, or any of their deputies, or any justice living near; on certificate and return of such proof by such custom house officer to the commissioners of the customs, they or two of them by their order shall

discharge the same. f. 15.

And if any person shall take any see for such oath, order, or certificate; he shall forfeit 100 l. half to the king, and half to him that shall sue. f. 16.

And if any superintendant of the quarentine, or watchman, shall in such case give a false certificate; he shall be guilty of selony without benefit of clergy. f. 17.

Note; The abovementioned act of the 9 An. was repealed by the 7 G. ft. 1. c. 3. but was revived by the 8 G. c. 8. which enacts, that neither the faid statute of the 7 G. nor any thing therein contained, shall continue in force longer than Mar. 25. 1723.

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# Players.

VERV person who shall for hire, gain, or reward, act, or cause to be acted, any play or other entertainment of the stage, or any part therein, if he shall have no legal settlement where he acts, without authority from the king or the lord chamberlain, shall be deemed a rogue and vagabond within the 12 An. (which act is repealed; but the same is re-enacted by the 17 G. 2. (.5.) 10 G. 2. c. 28. f. 1.

Or otherwise he shall forfeit 50 1. in which case he shall not also

suffer as a vagrant. f. 2.

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2. And if any play, or part thereof, be acted in any place where wine, ale, beer, or other liquors shall be fold, the same shall be deemed to be acted for gain, bire, and reward. f. 7.

3. And no person shall for hire, gain, or reward, act or cause to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain, 14 days before the acting, together with an account when and where it is intended to be acted, signed by one of the managers. f. 3.

to be acted, figned by one of the managers. f. 3.

And the lord chamberlain may prohibit the fame as he thinks fit; and if any person shall act without such copy being sent, or against such prohibition, he shall forfeit 50 l. and the licence of

the playhouse shall be void. J. 4.

4. And no person shall be authorized to act, except within the liberties of the city of Westminster, and where the king shall re-

fide. f. 5.

5. All the faid pecuniary penalties may be recovered in the courts at Westminster; or before two justices, by the oath of one witness, or confession, to be levied by distress; and for want of sufficient distress, the offender to be committed to the house of correction, not exceeding six months, to be kept to hard labour: or to the common gaol, not exceeding six months, without bail or mainprize: Persons aggrieved by order of the justices may appeal to the next sessions: The said penalties to be distributed, half to the informer, and half to the poor. s. 6.

Plate. See Excise. Pluries capias. See Process. Poison. See homicide.

# Polygamy.

BIGAMY is, where a man has two wives successively, Polygamy where he has several wives at the same time. 3 Inft. 88. Stam. 134.

By the statute of the 1 J. c. 11. If any person within his majesty's dominions of England and Wales, being married, shall marry any person, the former busband or wife being alive; such offence

fhall be folony (but within clergy.)

If the first marriage was beyond sea, and the latter in England, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage was in England, and the latter beyond fea, it feemeth that the offender cannot be indicted here, because the offence was not within the kingdom. Kely, 79. 80.

But this all shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas, by the space of seven

years together. id.

And this, altho' the party in England hath notice, that such

husband or wife is living. 1 H. H. 693.

Nor to any person whose busband or wife shall absent him or her felf, the one from the other, by the space of seven years together, in any part of his majesty's dominions, the one of them not knowing the other to be living within that time. id.

Nor to any person who shall be, at the time of such marriage, di-

worced by sentence in the ecclesiastical court.

And this divorce is to be understood not only a vinculo matrimonii, as for precontract, confanguinity, or affinity, which diffolveth the marriage, and therefore needeth not this proviso; but also, and chiefly a mensa & thoro, as for adultery, which dissolweth not the marriage, yet in respect of the generality of the words, a person divorced only a mensa & thoro is privileged from being a felon in marrying again, altho' the fecond marriage is 1 H. H. 694. void. 3 Inft. 89.

Nor to any person whose former marriage bath been, by sentence in the ecclefiaftical court, declared to be word, and of none effect. id.

Nor to any person, by reason of any former marriage made within age of consent. id. That is, either the woman being under 12, or the man under 14. 3 Inst. 89.

On a profecution upon this statute, the first and true wife is not

to be allowed as a witness against the husband; but it seems clear, that the second wife may be admitted to prove the second marriage, for she is not his wife so much as de facto. 1 H. H. 693.

> Pono. See Bame.

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## 10002.

CONCERNING the binding and ordering of parish and other apprentices, see title Apprentices.

Concerning the filiation and maintenance of bastard children,

fee title Baltards.

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Concerning the ordering of fervants, and other workmen and

labourers, fee title Serbants.

For these do fall-in with this title, no further than as they happen to become poor: Upon which account, their settlements are here treated of; but nothing otherwise in particular concerning them.

After having premised one general clause in the statute of the 17 G. 2. c. 38. s. 4. which seems to affect the whole law relating to this title, to wit, That if any person shall be aggrieved by any thing done or omitted by the churchwardens and overseers, or by any justice of the peace, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next general or quarter sessions, where the same shall be heard and finally determined; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions; and the court may award reasonable costs to either party, as they may do by the 8 & 9 W. in case of appeals concerning setclements; (This being premised) I shall treat of this extensive title, in the following order: That is to say,

- I. Concerning the appointment of overfeers, with their duty thereupon.
- II. Of settlements.
- III. Of removals.
- IV. Of the poor rate, and other helps towards their relief.
- V. Of the relief and ordering of the poor.
- VI. Of the overfeers account.
- VII. Penalty of overfeers for the neglect of ther duty.
- VIII. Indemnity of overfeers in the performance of their duty.
- I Appointment of overfeers, with their duty thereupon.
- 1. The churchwardens of every parish, and four, three, or two Appointment of swersees in pasubstantial bousholders there, as shall be thought meet, having rerishes and townspect things.

speet to the greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish. 43 El. c. 2. f. 1.

And whereas the inhabitants of Lancashire, Cheshire, Derby. shire, Yorkshire, Northumberland, the Bishoprick of Durham, Cumberland, and Westmorland, and many other counties in England and Wales, by reason of the largeness of the parishes, cannot reap the benefit of the said act of the 43 El. it is enacted, that all and every the poor, needy, impotent, and lame persons, within every township or willage within the several counties aforesaid, shall be maintained, provided for, and set on work, within the several and respective township and village, wherein he shall inhabit, or where in he was said tawfully settled; and there shall be yearly chosen and appointed two or more overseers, within every of the said townships or willages respectively. 13 & 14 C. 2. C. 12. f. 21.

And if any overfeer shall die, or remove, or become insolvent, before the expiration of his office; two justices (on oath thereof made)

may appoint another in his flead. 17 G. 2, c. 38. f. 3.

And if in any place no overfeer shall be appointed, every justice of the division shall forfeit 5 l. to the poor of such place, to be levied by the churchwardens and overfeers or one of them, by distress, by war ant from the sessions. 43 El. c. 2. f. 10.

Of every parish E. & G. K. and the inhabitants of Rufford. A mandamus was directed to the justices of the peace of the county of Nottingbam, reciting that within the ville of Rufford, in the forest of Sherwood, there are divers substantial freeholders able to contribute to the maintenance of the poor, and that there are no churchwardens or overfeers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint over-They return that the ville of Rufford is part of no parish, but time out of mind has been extraparochial without church, chapel, or parochial rights, and that there never have been any overfeers of the poor; and for that cause they cannot appoint. And there having been only an extrajudicial opinion of the court, in the case of Dolting and Stokeland, H. 11 An. that overfeers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be folemnly determined. And after argument and confideration of all the flatutes relating to the poor, the court were of opinion, that the powers given by the 43 El. to be executed in parishes, were by the 13 & 14 C. 2. extended to all townships and villages, whether parochial or extraparochial; that although most of the forests in England are extraparochial, yet notwithstanding they ought to maintain their own poor; and confequently overfeers might be appointed: for which purpole in this case a peremptory mandamus was awarded. Str. 512. 1 Mod. 39. 5 Mod. 273.

For the flatute directeth overfeers to be appointed within the feveral townships and villages within the feveral counties (without faying, within the feveral parishes in the said counties); so that if

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it is a township or village, and such township or village is within the county, it seemeth not to be material whether it is within any

But a township or village it must be. As in the case of K. and the inhabitants of Welbeck in the county of Nottingham, M. 14 G. 2. A mandamus was granted, suggesting that there are several householders and farmers inhabiting and residing within the village of Welbeck, able to provide for the poor; and therefore commands the justices to appoint overseers of the poor. To this it is returned, that Welbeck is extraparochial, and is not, nor ever was reputed to be a village or township, and therefore they cannot appoint any persons to be overseers. And upon argument this was held to be a good return. For though it doth not answer the supposal of the writ, as to there being several substantial housholders and farmers; yet it answers the point in the 13 & 14 C. 2. c. 12. by faying it is no township or village, or reputed as such: and it is to such places only that we can fend a writ. Str. 1143.

And the like had been adjudged before, in the case of Denham and Dalham, H. 8 G. z. And of Stoke Prior and Grafton, E. 10 G. 2. In which case of Denham and Dalham, it was adjudged, that Southwold an extraparochial place in the county of Suffex, confifting of two houses and 300 acres of land, was not a place liable to maintain its own poor, because it had not the reputation of a ville, and two houses were not sufficient to make it such; but that there ought to be several houses and neighbours, and they

should have a petty constable. Str. 1004, 1071.

For a township in strictness seemeth to be nothing else but the conflablewick or decennary, which anciently confifted of ten men with their families, of which the chief or head was the constable, otherwise called the tythingman, or headborough; although now for the most part, by reason of the increase of people, and the improvements of tillage, the decennary comprehendeth many more families than ten.

Four, three, or two M. 13 G. 2. K. and Harman. An appointment of five overfeers was thought to exceed the direction of the flatute; but inafmuch as the 13 & 14 C. 2. impowers the juflices to appoint two or more (indefinitely) in townships or villages, and it hath been the custom in large parishes to appoint more than four, the court would not quash the appointment. Seff. C. V. 2. 148.

Substantial housholders there] M. 20 G. 2. Case of the overseers of Weally in Herefordshire. There were two fets of overfeers appointed, and both quashed; one, because the persons appointed were described only as principal inhabitants, instead of pursuing the words of the statute, which are, substantial housholders: and the other, because it only called them substantial housholders, without adding there, or in the parish; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. Str. 1261.

And abundance of other orders have by the court of king's bench been quashed from time to time, for not setting forth that the persons appointed were substantial housholders.

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# 10002. (Overfeers.)

It is faid, that a woman ought not to be appointed overseer. E. 10 An. Med. Ca. 77.

To be nominated yearly in Easter week] E. 13 G. 2. K. and Clerkenwell. The court seemed to think an appointment of overseers on a Sunday, to be a good appointment; for it may be in Easter week, and this is the first day of the week. Foley 4.

Or within one month after Easter] H. 13 G. 2. K. and Sparrow. Upon a rule to shew cause, why the appointment of overseers for the town of Ipswich should not be quashed, the objection was, that the justices upon a mandamus directed to them, had appointed overfeers, but that it was not within the month after Easter, but afterwards, and that consequently the appointment was void. But by Lee Ch. J. who delivered the opinion of the court; As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the act it self void, for it would subject the parish to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this cate, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overfeers, and that within such a time. Now the justices have neglected their duty, in not appointing overfeers within the proper time, and by the act have forfeited 5 1. but that doth not make fuch appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwife; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions. Seff. C. V. 2. 140. Str. 1123.

Under the hand and seal of two or more justices] M. 13 G. Chilmerton and Flagg. The sessions appointed overseers: but the order was quashed by the court of king's bench; because the sessions have no original jurisdiction in that case by the statute. Sess. C. V. 1. 260. Foley 7.

And the reason is, because the statute gives a power of appealing to the sessions against the order of appointment; which power by this means would be taken away.

In or near the parish or division] M. 13 G. 2. K. and Sparrow. An appointment of overseers, not mentioning the justices to be of the division, was held to be good enough; for that the words in this case are only directory. Self. C. V. 2. 140.

And many other counties in England and Wales T. 27 C. 2. In the case of Skillington and Norton, it was held, that although other counties in general are here mentioned in the recital; yet the statute doth not extend to any other counties but those expresly named, none others being specified in the enacting part. 2 Lev.

But afterwards, in the case of Dolting and Stokeland, H. 11 An. It was held by the whole court, that by reason of the words [and many other counties in England and Wales] the act is general, and

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extends to other counties than those named in the act, otherwise it would not extend to one county in Wales. Foley 98.

And in the case of Cliston and Churcham, H. 12 G. 2. It was adjudged, that the act extendeth to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And Lee Ch. J. said that so it was determined, upon great debate and consideration, in the aforesaid case of Dolting and Stokeland; which case hath been ever since adhered to. Andr. 314.

2. And that the justices may know, what persons are fit to be Warrant for appointed overseers, it is usual and requisite for them, to iffue their returning lists of precepts in some such form as here followeth; viz.

Westmorland To Thomas Dennison, gentleman, high constable of Kendal Ward within the said county.

The form of the faid high constable's warrant to the petty constables.

Westmorland Kendal Ward. { To the constable of-

I wirtue of a precept from two of his majesty's justices of the b peace in and for the Said county (one whereof is of the quorum) to me directed, you are bereby required immediately upon fight hereof, to give notice to all and every the overfeers of the poor within your constablewick, that they do make out a list in writing of a competent number of substantial bousholders within their respective difricts, and deliver-in the same to the said justices and others his said majesty's justices of the peace for the said county, at —— in in the said county, on —— the —— day of —— at the hour - in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And be you then there, to certify what you shall have done in the premisses. Herein fail you not. Given under my band the - day of -- in the year of our Tho. Dennison, High Constable.

3. And the form of an appointment of overfeers, clear of the Form of an appointment of overfeers, clear of the Form of an appointment of overfeers.

Westmorland W E towo of his majesty's justices of the peace in and for the said county of Westmorland, one whereof is of the quorum, do hereby nominate and appoint A. O. and B. O. being substantial housholders of the parish [or, township] in the said county, to be overseers of the poor of the said parish

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parifb [or, township] according to the direction of the flatute in that case made and provided. Given under our hands and seals (within a month after Eafter.)

But by a remedial clause, in the act of the 17 G. 2. c. 38. It is enacted, that the diffress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the quarrant for the appointment of overfeers. 1. 8.

Appeal against pointment.

4. If any person shall find himself aggrieved, by any act done by the order of ap- the faid justices; be may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 El. c. 2. f. 6.

To the general quarter sessions This clause leaves the appeal at large, and doth not restrain it to the next sessions: But the abovementioned act of the 17 G. 2. directs the appeal to be to the next fessions, but yet not in negative words, so as to say, that it shall be at the next fessions, and not otherwise. So that both may feem to stand well together; and then the sense of the statute of the 17 G. 2. will be this, That the appeal against any thing done or omitted by the overfeers or justices, in cases wherein no appeal is given by former statutes, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions; but in cases wherein an appeal is given by former statutes, such appeal may be to the next fessions according to this clause, or may be according to the directions of fuch former statutes. And in truth many acts of the churchwardens and overieers may be fo contrived, that they cannot be known before the next fessions, and it would give them a great opportunity of fraud, if they might be fafe by concealing fuch practices, until the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next fessions by the 17 G. 2.

Overfeer refuling to take the office.

5. M. 14 G. 2. K. and Jones. A person was indicted for not taking upon him the office of overfear; and by the court it was held to be an offence indictable; for that altho' the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in that office: and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. Seff. C. V. 2. 187. Str. 1146.

Overseers general duty.

6. The overscers thus appointed, and taking upon them the office, shall within 14 days receive the books of affessments, and of accounts, from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. c. 38. f. 1, 11, 13.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for fetting to work all such persons, married or unmarried, baving no means to maintain them, and using no ordinary and daily trade. Which said churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse, to be allowed by two that

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fuch justices, shall meet at least once a month, in the church, on Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and order to be set down in the premisses; Upon pain that every one of them absenting themselves without lawful cause, from such monthly meeting, or being negligent in their office, shall forfeit for every default 20 s. to the poor; to be levied by some or one of the churchwardens and overseers, by warrant from two such justices, by distress; or in defect thereof, any two such justices may commit the offender to the common goal, there to remain swithout bail or mainpriz, till the said forfeiture shall be paid. Provided, that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 El. C. 2. f. 2, 6, 11.

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extraparochial places; because they have no church to meet in. 8 Mod. E. 7 G.

#### II. Of fettlements.

By the common law, a fettlement did imply no more, than a man's house and home and habitation; and at the common law a man might gain a settlement any where, and could not be removed, unless in the case of vagrancy. The statute of the 39 El. is the first statute that mentions the word settlement. The first day a man came into a parish, he was a stranger, the second day he was a guest, and the third he was an inhabitant. And until the dissolution of monasteries, the poor were in a great measure maintained by the religious houses. Case of S. 44.

Afterwards, when the statute of the 43 El. was made, by which every parish was to maintain its own poor; such persons were held to be the poor of any parish, as were settled there a convenient time, which was judged to be a month; so that a month's abode made an inhabitant. 2 Salk. 492.

But there remaining some doubts upon the said statute of the 43 El. the statute of the 13 & 14 C. 2. was made, which statute will often occur in the following sections, being the soundation of all the settlements as they stand at this day; upon which single act there have been more cases adjudged, than upon any other sifty acts in the statute book.

But that I may treat distinctly, and as clearly as may be, concerning this subject of settlements, (after having first premised one general rule which controlls almost all the cases of settlements, viz. That no settlement can be legal, which is brought about by prastice or compulsion; Read. Tit. Poor.) I shall proceed in the following method:

- i. Of persons baving no settlement.
- ii. Of certificates.
- iii. Of settlement by birth, viz. of bastards, and others.

iv. Of

# 1002. (Settlements.)

iv. Of the settlement of children with their parents.

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v. Of settlement by apprenticeship.

vi. Of settlement by service.

vii. Of settlement by marriage.

viii. Of settlement by continuing forty days after notice.

ix. Of settlement by paying parish rates.

x. Of settlement by serving a parish office.

xi. Of settlement by renting ten pounds a year.

xii. Of settlement by a person's own estate.

### i. Of persons baving no settlement.

Whereas the number of poor, within England and Wales, it wery great and burdensome; and whereas, by reason of some desection the law, poor people are not restrained from going from one parish to another,—it is enacted, that within forty days after any such persons shall come to settle in any tenement under 101. a year, two justices (1 Q.) may remove them to the place where they were last legally settled. 13 & 14 C. 2. C. 12. S. 1.

Poor within England and Wales] By these words of restriction, and the word [such] afterwards, which seems to have reference to those kinds of poor only, and by the direction of removing them to the place where they were last legally settled, which can only mean where they were last legally settled within the then kingdom; it may seem, that other poor, not belonging to England or Walis, are not within the regulations of this statute.

And in Conrad's case, T. 6 W. it was adjudged and declared as follows: A woman and her two children landed at Harwich from Holland, and removing to another place, were sent back by order of two justices; But by the court, The landing makes no settlement; and the order was quashed. And Eyre J. seemed to be of opinion, that this is a case omitted out of the statute. Comb. 287.

And if there is a defect in the law with respect to the subjects of a foreign realm, the case of a Scotchman or Irishman in England seemeth to be not much different, except only when they shall become vagrants, for in such case they may be sent into Scotland or Ireland: But otherwise, if they be able to maintain themselves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two justices, as persons likely to become chargeable. By which means they seem to be in a better condition in England, than the English subjects: for that, not being removable, until they be forced to ask relief, and so thereby become vagrants, as wandring abroad and begging; they may continue undisturbed, without the intanglements of a certificate, and consequently are in a better capacity of gaining settlements,

if not for themselves, yet for their children born there, and for their servants and apprentices.

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Within forty days The flatute of the 1 7. 2. requires that such 40 days continuance shall not make a settlement, but from the time of delivering notice in writing; and by the 3 W. it must be from the time of the publication of fuch notice in the church: But it hath always been understood, that a person not removable need not to give fuch notice; and that a person continuing 40 days unremovable, and a person not removed for 40 days after such notice given and published, shall equally gain a settlement. Now the following case happened, E. 2 G. between the parishes of St. Giles and St. Margaret: An Englishwoman was married to a foreigner, who had no fettlement in England; the husband continued for the space of 40 days in a parish unremovable, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family, for 40 days unremovable, she did thereby gain a settlement : But by Holt Ch. J. Where a person stays 40 days in a place, whence he hath a right not to be removed, that gains a fettlement; otherwife, where he only stays in a place, because they do not know where to remove him. And in this case, he said, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him starve. Seff. C. V. I. 97.

But there is another thing to be confidered. It appears, in that case, that there was a terminus a quo, but not a terminus ad quem; or in other words, that the man's fituation in the parish was not fuch as the law calls unremovable, as if he had rented a tenement of 10 l. a year; but that in fact he was removable, if they had known whither to have fent him. But put the case, that he had rented a tenement of 10 l. a year; or, which is the same thing, that a Scotchman or Irishman had rented a tenement of 101. a year: The question is, Whether by continuing thereupon 40 days unremovable, he would thereby have gained a fettlement in purfuance of this flatute? If it is answered in the affirmative, then this will follow; that if he comes to refide upon a tenement under 10 l. a year, and gives notice in writing, and causes the same to be published as the law requires, and continues 40 days after such publication unremoved, he must by the same statute gain a settlement. And if so, a Scotchman or Irishman may settle himself and his family in 40 days time, in any parish whatsoever, where he can procure any little cottage to live in, by giving and causing to be published such notice as aforesaid. For removed he cannot be; and continuing unremoved for 40 days after the publication of fuch notice, he becomes afterwards not removable; and being not removable, and being settled, is the same thing. On the other hand, if we have recourse to the observation abovementioned, and fay, that this statute extends only to the poor of England and Wales, then this will follow; that a Scotchman or Irishman can gain no settlement in England by virtue of this statute, and if not by this, then not by any other of the subsequent sta-VOL. II.

tutes concerning fettlements, for that they are all relative there's unto, and depending thereupon; that is to fay, in these circumstances, a Scotchman or Irishman can gain no settlement in England, neither by renting 10 l. a year, nor by continuing 40 days after notice, nor by apprenticeship, nor by service, nor by paying parish rates, nor by serving a parish office. Which dilemma, so far as I have observed, hath not yet been solved, nor confidered.

### ii. Of certificates.

Before we come to treat specially of settlements, it will be neceffary to speak somewhat of certificates, as affecting settlements

feveral ways.

By the 13 & 14 C. 2. c. 12. Power is given, upon complaint of the churchwardens or overfeers, within 40 days after a person is come to fettle on any tenement under 10 l. a year, unto two justices (12.) to remove such person to the place where he was last legally settled, unless be give sufficient security for discharge of

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the parish, to be allowed by the said justices. f. 1.

And by the 8 & 9 W. c. 30. it is enacted as follows: Foras. much as many poor persons chargeable to the place where they live, meerly for want of work, would elsewhere maintain themfelves, but not being able to give fuch fecurity as may be expected, on their coming to fettle in any other place, It is therefore enacted, That if any person who skall come into any parish or place there to refide, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to any of them, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, township, or place, or the major part of them, or of the overseers where there are no churchwardens; to be attested by two or more credible witnesses, thereby owning and acknowledging the person mentioned in the said certificate, to be an inhabitant legally settled in that parish, township, or place; Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given: And then, and not before, it shall be lawful for such person, and his children, the' born in that parish, not having otherwife acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place, from whence such certificate was brought. f. 1.

And by the 3 G. 2. c. 29. The witnesses who attest the execution of the certificate by the churchwardens and overseers, or one of the said witnesses, shall make oath before the justices who are to allow the same, that such witness or witnesses, did see the churchwardens and overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and feal the said certificate;

and that the names of such witnesses, attesting the Said certificate, are of their own proper handwriting : Which said justices shall also certify, that such oath was made before them. And every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof. 1. 8.

a certificate H. 3 G. 2. K. and St. Ives. A mandamus was moved for, to compel the churchwardens and overfeers to fign a certificate: But the court rejected the motion as a very strange attempt. Seff. C. V. 2. 128.

A certificate The form of which certificate may be this:

TE the churchwardens and overfeers of the Westmorland. poor of the parish [or, township] of in the faid county of Westmorland, do hereby certify, own, and acknowledge, that A. L. yeoman, is an inhabitant legally settled in our parish [or, township] of \_\_\_\_\_ aforesaid. In witness whereof we have bereunto set our hands and seals, the of - in the year of our lord -

Attefted by A. B. A. B. C. D. Churchwardens. A. W. B. W. E.F. Overseers of the G. H. ( poor.

We J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the county of - aforesaid, do allow of the abovewritten certificate. And we do also certify, that A.W. one of the witnesses who attested the same, bath this day made oath before us the said justices, that he the said A.W. did see the churchwardens and overseers of the poor of the said parish, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of A.W. and B.W. who are the witnesses attesting the said certificate, are respectively of their own proper handwriting. Given under our hands this -

- Shall oblige the said parish or place, to re-Such certificate teive and provide for the person mentioned therein] Formerly it was held, that a certificate was only conclusive between the two parithes; but now it is held to be conclusive to all the world, as is determined in the following case; viz.

M. 9 An. Honyton and St. Mary-Axe. The question was, Whether the parish granting the certificate, was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever? Parker Ch. J. delivered the opinion of the whole Court: Before the statute, a certificate was only an evidence of a private undertaking between the parishes, in the nature of a contract; but now it is a folemn acknowledgment, like the conuzance of a fine; and thereby the party is owned to be legally fettled there: and as all other parishes on this certificate are bound to receive him, so the parish that certifies is concluded as to all other parishes. 2 Salk. 535. Foley 177.

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# 10002. (Settlement by birth.)

And the case is put even yet stronger in the following report: T. 20 G. 2. K. and Hederon. The parish of Maidsone gave a certificate to Hederon, acknowledging Ric. Burden, and Mary his wife, and their four children, to be legally settled at Maidsone. Afterwards it appeared, that Mary was not his lawful wise, but that he had a former wise then living. Upon which Maidstone acknowledged the settlement of the real and true wise, but not of the said Mary and her children; and pleaded that it would be hard that they should be forced to take two wives, and different children. But by the court, the parish that certifies must take care for whom they certify; and the certificate is conclusive. Seff. C. V. 2. 206. Str. 1233.

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Whenever they shall bappen to become chargeable] Yet a certificate to receive the persons whenever they become chargeable, is not binding against a subsequent settlement; for tho' it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. Harrison and Lewis, 3 Salk. 253.

What hath hitherto been inferted under this head, is judged sufficient for this place, to set forth the law concerning certificates in general; what further belongs to the settlement and removal of certificate persons, will fall in in its due course afterwards.

# iii. Of settlement by birth; viz. of bastards, and others.

1. Of bastards.

Note; It is not in this place questioned, who shall or shall not be deemed a bastard, but the settlement only is considered of such as are first supposed to be bastards: other matters relating to them, as concerning their siliation, and maintenance, and the like, are treated of under title Bastards.

How far baffards are to be fettled where born.

A bastard child is prima facie settled where born: This is an uncontroverted rule, and is ancienter than the statute of 13 & 14 C. 2. concerning settlements; and ancienter than the 43 El. which requires the poor to be maintained within their respective parishes; for in the statute of the 18th of Eliz. which takes order for the mother and reputed father to contribute towards their maintenance, it is thus recited in the preamble, Concerning bastards begotten and born out of lawful matrimony, the said bastards being now left to be kept at the charges of the parish where they were born—

Nevertheless this rule admits of divers exceptions; which are as follows:

Baftard born in a place by collution. (1) If a woman comes into a place by privity and collusion of the officers where she belongs, and is there delivered of a bastard; such bastard gains no settlement, notwithstanding its birth. Cas. of S. 66.

And in the case of Masters and Child, H. 10 W. It was ruled, that if a woman big with child of a bastard, and settled in one parish,

parish, is perfuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was fettled, tho' the child was not born there: But if a woman, with child of a bastard, come accidentally into one parish, and is perfuaded by some of the parishioners to go into another parish, which she doth, and there is delivered, this shall not charge that parish which persuaded her. 3 Salk. 66.

(2) Also, If a bastard is born under an order of removal, and Bastard born afbefore the mother can be fent to her place of fettlement, being ter the order of hindred by water or otherwife; fuch bastard shall not be settled removal is made

where so born, but at the mother's settlement. M. 10 An. 2. and

Ickleford. Seff. C. V. 1. 33. Caf. of S. 66.

(3) So also, If the officers are carrying a woman by virtue of Bastard born in an order of removal, and she be delivered on the road in transitu; removing. the bastard shall go with the mother where she is going, by virtue of the order, notwithstanding the birth. E. 10 An. fane Grey's case. Cas. of S. 66.

(4) Again, In the case of Much-Waltham and Peram, M. Bastard born af-8 W. A woman big with a bastard child, was removed by order and before the of two justices, from Much-Waltham to Peram. Before the next appeal. sessions, she was delivered at Peram of a bastard child. At the sessions, Peram appealed, and the justices adjudged the woman to be last settled at Much-Waltham, and ordered her to be sent back thither. After which, an order was made, to fettle the child at Peram; which it was moved to quash, because the regularly bastards must be maintained where born, yet in this case, where there seems to be a contrivance, it shall not be so. The court

seemed to agree to this, and a rule was made to shew cause, but none was shewed. 2 Salk. 474.

And further, In the case of Westbury and Coston, H. 2 An. A woman big with child was removed by order of the juffices, from Westbury to Coston: And, pending the order, before the next quarter fessions, she was delivered of a bastard child. Coston appealed, and thereupon the order of the two justices was reversed; but the child was fent back to Coston, as the place of its birth. But by the court, the birth at Coston, did not settle the child there, because it was under an illegal order procured at Westbury, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And Holt Ch. J. said, Tho' here be no fraud in this cause, yet here is a wrongful removal, and the reversal makes all void ab initio: Fraud, or not fraud, is not material in this case; but the settlement of the child depends upon the removal, for if that was wrong, they shall not ease themselves by it. 1 Salk. 121. 2 Salk. 532.

(5) So also, By the statute of the 17 G. 2. c. 5. Where any Bastard born in woman, wandring and begging, shall be delivered of a child, in a state of vaany parish or place, to which she doth not belong, and thereby grancy. becometh chargeable to the same; the churchwardens or overseers may detain her, till they can fafely convey her to a justice of the peace. And if such woman shall be detained and conveyed to a jultice as aforesaid, the child of which she is delivered, if a battard, shall not be settled in the place where so born, nor be sent

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#### (Settlement by birth.) 10002.

thither by a vagrant pass; but the settlement of such woman, shall be deemed the fettlement of fuch child. f. 25.

(6) A child born in the house of correction, shall be sent to

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the place of it's mother's settlement. 2 Bulstr. 358.

And in the case of Elsing and the county gaol of Herefordshire, H. 2 G. A bastard was born in the county gaol: Resolved, that

Baftard born un-

the settlement was with the mother. Seff. C. V. 1. 94.

(7) T. 5 G. New Windsor and White Waltham. The parish of der a certificate, White Waltham gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of New Windsor, and had there fix children. Afterwards, the woman fwearing they were never married, the question was, whether (upon that supposition) the children, as bastards, should be settled in the parish where they were born, or in the parish which gave the certificate with their father and mother. And by the court, there is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not fuch an iffue as will follow the settlement of his father or mother, neither is such bastard his or her child within the intention of the statute, so as to be sent

back with the parent. Str. 186.

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the court held that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate); Therefore in the case of Hynton and Lydlinch, T. 15 G. 2. the matter came under debate again; which was thus: A fingle woman went into the parish of Lyd-linch, with a certificate from Hinton; lived there a year, and then had a bastard child. The sole question was, Whether the child should be settled in the parish where born, or in the parish giving the certificate. By the court; The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish, before she was delivered of the child; and wherever this court, in determining a fettlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point, have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands intirely on the 8 & 9 W. which for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given, to receive and continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her family, and in another place, with his or her children, to the place from whence the certificate was brought. question then is, whether the bastard is included under the words family or children; and we take it he is not; for the law takes no notice of bastard children, they are filii nullius, filii topuli, and are prima facie fettled where born. Nelf. Baft. Seff. C. V. 2.

170. Str. 1168.

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Hitherto concerning the settlement of a bastard child: But not- Bastard not to be withstanding the child's settlement, yet nevertheless if the mother removed whilst and the child have different fettlements, it seemeth that the bastard a nurse child. child, even as all other children, shall go with the mother for nurture until the age of 7 years, and be maintained at the charge of the parish where the mother is settled, as a necessary appendage of the mother, and inseparable from her; for there doth not feem to be any law to force the child from the mother, or to compel the parish where it was born to maintain it whilst it is out of their parish.

As to its being inseparable from the mother, the following case happened, M. 3 G. 2. Skeffreth and Walford. The order was, to remove a woman to her fettlement; and her bastard child, of two years of age, to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to nurture so very young a child; which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her set-And it was quashed by the court for that reason. Seff. C. V. 2. 90.

But altho' the child may not be separated from the mother, yet if the voluntarily defert it, it feemeth that the cause of nurture then ceaseth, and that then it may be sent to its place of settle-

2. Of legitimate children.

In the case of Rickmansworth and St. Giles's; A child was How far legitiordered to be removed from the parish of Rickmansworth to the mate children parish of St. Giles, as being the place of his birth, the place of shall be settled his father's last legal settlement being not known: For where the father's place of last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth, as

well as an illegitimate one. Black. 246.

H. 8 An. Cripplegate and St. Saviour's. A child of 3 years of age was removed from one of these parishes to the other, and it appeared in the order, that they removed him there, because he was born there, not having any other fettlement. By the court; The father's fettlement is the fettlement of the children, when it can be found out; otherwise the birth of the child prima facie is the lettlement of the child, until there is another settlement found So a bastard child's settlement is its birth, because it is filius nullius; so if they cannot find out the settlement of a legal father, the birth is a fettlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and the settlement by birth is only quousque they find the father's settlement; and if they never can find that, it is absolute upon them. Foley 265.

But here it is to be observed, that in the two cases abovementioned, the point was not in question, whether or no if the father had no settlement, yet if the mother had a settlement, such chil-

dren should follow the mother's settlement, or should be sent to the place of their birth; and there will appear good opinions in the next course of settlements, that if the father hath no settlement as being a foreigner, or if the father's fettlement is not known, yet if the mother hath a settlement, the children in such case shall not be sent to the place of their birth, but to the place of their mother's settlement: But the rule intended to be drawn from these cases, which is sufficient for this place, and which the cases will well bear, is no more than this, that the place of the birth of a legitimate child is the settlement of it, until another fettlement be found out.

### iv. Of the settlement of children with their parents.

Settlement of a ligitimate child with the parents.

1. The birth of legitimate children doth not give them a fettlement, except where the settlement of their father and mother is not known, and then only till it is known. Foley 269.

At what age a fettlement diftinct from the parents.

2. Formerly it was held, that a child shall continue with its child may gain a parents as a nurse child, until it shall be 8 years of age, during which time it shall not be deemed capable of gaining a settlement in its own right; but by the later resolutions it seems to be agreed, that a legitimate child shall necessarily follow the settlement of its parents as a nurse child, or as part of the family, only until it shall be 7 years of age; and that after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a fettlement of its own. But it feemeth not difficult to determine with exact certainty, at what age a child may have acquired a fettlement of his own, distinct from the parents settlement. For by the 5 El. c. 5. s. 12. A child of 7 years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 G. 2. a vagrant's child of that age may by the justices be put out an apprentice: And so soon as he shall have resided and lodged in a parish for 40 days under the indenture, he will have thereby gained a fettlement. So that the precise time, when a person may have gained a settlement in his own right, is at the age of 7 years and 40 days.

Father living.

3. E. 10 An. Q. and St. Giles's. Order to remove an infant to the parish of St. Giles's; because it appeared, that tho' the father was fettled at another place, yet the child was born at  $\delta t$ . Giles's. Quashed, by the court; for that the place of the settlement of the child is with the father, and not the place where the child was born. Seff. C. V. 1. 18.

H. 10 G. St. Giles's Reading and Everfley Blackwater. It was ruled by all the court upon argument, that where a father gains a fecond fettlement after the birth of his child, that fettlement is immediately communicated to the child. And a child may be fent to the place of his father's fettlement, without ever having been there before. Seff. C. V. 2. 112. Str. 580.

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## 2002. (Settlement with the parents.)

M. 12 G. 2. Souton and Sidbury. The question was, whether the children, being above the age of nurture, shall be removed with the father to the farther's fettlement, where the children had never inhabited? By Lee Ch. J. In the case of Ewersley Blackwater, the court were of opinion, that a child might be fent to the settlement of his father, tho' it had never been there before, contrary to an opinion of L. Parker in a former case. faid, the true diffinction, I think, is, that where children have gained no fettlement, but continue part of their father's family, they shall follow their father's settlement. Seff. C. V. 2. 150.

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T. 2 An. Comner and Milton. A man fettled at Comner, and having feveral children born in that parish, afterwards removed to Milton with his children, and gained a fettlement there; and becoming very poor, his children born in Comner, were by an order of two justices sent to Comner, viz. those that were under 7 years old; the justices apprehending, that the place of their birth was the place of their lawful fettlement. And this order being removed into the king's bench by certiorari, it was infifted to maintain the order, that the children had gained a fettlement in Comner by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at Milton; for his children were with him there only as nurse children, and his fettlement shall not be the fettlement of the children. But by Holt Ch. J. The place where a bastard is born, is the place of his fettlement, unless there is some trick to charge the parish; but the place where legitimate children are born, is not the place of their fettlement, for let that be where it will, the children are fettled where their parents are fettled; as for instance, if the father is settled in the parish of H. but goes to work in the parish of B. and before he gains any settlement there, has a son born in the parish of B. and then dies; this child may be sent to the parish of H. for it is not the birth, but the settlement of the father, that makes the fettlement of his child; and if the father hath gained a new fettlement for himself, he hath likewise gained a new fettlement for his children, who do not go with him to his new fettlement as nurse children, but as part of his family. 3 Salk. 259.

The foregoing cases proceed upon a supposition that the children are part of the father's family; the two following cases are, where the child was no part of the father's family, but had left the father, and afterwards the father acquired a new fettlement; and the question was, whether in such case the son (having gained no lettlement of his own in the mean time) shall follow the father's

new acquired fettlement.

1. 7 G. Eastwoodhay and Westwoodhay. Upon appeal from an order of two justices, for the removal of Robert Baker, from the parish of Westwoodbay to the parish of Eastwoodbay, the sessions state the fact specially for the opinion of the court: That forty years fince, Thomas Baker, the father of this Robert, was feifed in fee of a freehold estate in the parish of Hampstead Marshal, where he lived till the year 1697, and had this fon Robert, who

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was at that time eight years old: That in 1697, Thomas the father and all his family removed to Cheveley, where he rented a tenement of 201. a year, for two years: That in 1699, he purchased a copyhold estate of 11 1. a year in the parish of Westewoodhay, whither he removed with his fon and fervants, and ferved churchwarden and other parish offices, and paid taxes, and staid there till the year 1716: That in 1716, he purchased a cottage of 11. 125. 6d. a year in Eaffwoodbay, and went and lived upon it till his death; but Robert the fon staid behind in Westwoodhay, where he married a wife, and has worked ever fince on his own account, and that he is 30 years old. Upon the whole, the fessions confirm the order of the two justices for his fettlement at Eastwoodhay. It was moved to quash the order of fessions, for that the settlement of Robert the son is either at Hampstead Marshal, where he was born, and where he lived till eight years old; or if it should be carried so far, as that he gained a new fettlement with the father, by removing with him as part of his family, according to the case of Cumner and Milton, yet that can carry him no farther than Westwoodhay, which is the last place to which he accompanied his father: but let the fettlement be in either, it is not material now; the only question being whether here is any fettlement in Eastwoodbay, for which there is no colour. On the other hand, it was infifted, that let the fon be of what age he will, he shall follow the settlement of the father, till he gains one by his own acquisition; and it appearing he had never done any thing to gain a fettlement by act of his own, either in Hampstead Marshal. Cheweley, or Westwoodbay, then he must follow the fettlement of the father as well in Eastswoodbay as in any of the rest. Pratt Ch. J. The question is not, where this man and his family are settled, but whether there appears a settlement of him in Eastwoodhay. If he had gone thither with his father, as part of the family; possibly it might have been a settlement of him there: but by flaying behind, he was divided from his father, and therefore there is no colour to make it a fettlement in Eastwoodhay. I think his settlement is in Westwoodhay, which was the last place where he lived as part of the father's family, To which the rest of the court agreed: And the order was quashed. Str. 438.

E. 2 G. 2. St. Michael's Norwich and St. Matthew's lpfwich. Two justices made an order, to remove Edmund Williams, Anne his wife, and Edmund, Solomon, and Amy, children of the faid Edmund the father, from the parish of St. Michael in Nor-wich, to the parish of St. Matthew in Ipswich. Upon an appeal from this order, the fessions stated the matter specially, viz. That Edmund Williams the elder, father of Edmund Williams the father of the said children, was settled at Shipton Mallet in Somersetsbire; and afterwards removed to Bruton in the said county, and had a writing given him from Shipton Mallet, acknowledging his legal fettlement to be there; by virtue of which he continued at Bruton for 20 years, where Edmund the fon was born; and that he continued there with his father till he was 19 years of age, and was bred up to his father's business of a woolcomber.

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## 2002. (Settlement with the parents.)

Then Edmund the fon left his father, and came to Norwich, and there he married two wives; by the first, he had Edmund the grandson; and ten years after, his wife died. Then he married Anne his now wife; by whom he had Solomon and Amy two other children; fince whole birth, about two years ago, Edmund Williams the grandfather gained a new fettlement at St. Matthew's Issuich: But Edmund the fon hath never lived with his father at Inswich, or any where else, since the lived with him at Bruton. The question was, Whether the persons removed, to wit, Edmund the second, his wife, and three children, should follow the settlement of the grandfather at Ipswich, or whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time? Mr. J. Reynolds; I do not see how the father can gain a settlement for the son, so many years after the fon has left him. Lord Ch. J. Raymond; I think it is odd, that an old man of fixty, who has left his father for 40 years, shall follow the settlement of his father, as oft as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents, because of nurture. And by the whole court; The reason why we inquire into the ages of children is, because if they are grown up, and above 7 years old, they may gain a settlement by their own act; but it is almost a contradiction in terms to fay, that a man who has left his father 40 years, shall follow the settlement of his father. Seff. C. V. 2. 129. Str. 831.

4. H. 10 G. St. Giles's and Everfley Blackwater. Tho' the place Father dead. of the birth of a child, where the father hath no fettlement, is the place of the settlement of the child; yet where the father hath gained a fettlement, his children, tho' born in another parish, shall be looked on as fettled at the place of their father's last legal fettlement, and shall be removed thither, as well after the death of their father, if occasion requires, as in his life time, supposing they have gained no settlement of their own. L. Raym. 1332.

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T. 8 W. K. and Luckington. Howel and his wife were fettled at Luckington, and came to St. Austin's, and there a child was born. The father dies in the king's fervice. The question was, who shall keep the child? It was objected, that it was settled where born; for that they could not fend it to the father, when he was dead. But by Holt Ch. J. The death of the father doth not alter the child's fettlement. Comb. 380.

5. M. 1 G. St. George's and St. Katherine's. A man settled Father dead and in St. Katherine's, married, and had fix children born there, and the mother a died. After his death, the widow goes into the parish of St. George, with her fix children, and rents a house of 121. a year, and lives in it with her children four months. The fingle queftion was, whether the children should be settled, where their father was last fettled, or have a settlement with the mother in the parish of St. George; and the whole court were of opinion, that the fix children were fettled in the parish of St. George, where the mother's last fettlement was. And by Parker Ch. J. There is no distinction between the settlement of children with the fa-

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ther or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them: fo does the law, and every argument that holds for their fettle. ment with the father, holds as to their fettlement with the mo-The reason why children shall not gain a settlement, where the widow gains a fettlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any fuslenance without the husband's leave. But in this case, since she is equally punishable with her husband for deferting her children, and therefore could not leave them behind her, they must gain a settlement with her. Foley 254. Seff. C.

V. 1. 69.

H. 13 G. Woodend and Paulespury. John Buncher was settled at Woodend, and died, leaving a widow, and one daughter aged 14 years. The widow removed to Paulespury, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether the daughter gained a settlement at Paulespury? And it was adjudged that she did; because the mother being a widow, having gained a new fettlement after her huf. band's death, the daughter gained a fettlement also, as part of her family. And there is no difference, between a father's gaining a fettlement, and a mother's in such a case as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her. L. Raym. 1473. Fol. 256. Str. 746.

The same resolved in the case of Barton Tuff and Happisburgh.

T. 8 & 9 G. 2. Seff. C. V. 1. 317.

6. H. 13 G. Woodend and Paulespury. If after the husband's the mother mar- death, the wife shall marry again, to a man settled in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family; and therefore gain no fettlement thereby, in the parish where the fa-

ther in law is fettled. L. Raym. 1473.

T. 2 An. Comner and Milton. 2 Salk. 482. M. 10 W. 3 Salk. If after the death of the father, the mother marries again, to a husband who is settled in another parish; her children, such of them as are above 7 years old, shall not be removed; those under, shall be removed, but that only for nurture, for they shall be kept at the charge of the other parish, where their father whilst living was fettled; and to that parish they may be sent after 7 years old, as to the place of their lawful fettlement; for this accidental fettlement of their mother, which was only by the marriage with a fecond husband, and as she is now become one person with him, shall not gain a settlement for her children.

Note; this authority is only produced here, to shew the settlement, as to which it may be good enough; but as to the maintenance (as hath been intimated before, and as will be confidered more at large when we come to treat of the maintenance of the poor) it doth not feem sufficiently to appear, how one parish may

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he compelled to maintain their poor residing in another parish, unless it be in the case of persons residing under a certificate.

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7. E. 8 G. 2. K. and St. Mary Berkhamstead. The father ran Father run away, away, and the mother went and refided on an effate devifed to her: whether the The question was, whether the children could gain a settlement, settlement with by residing with the mother on such estate, where the father had the mother. never lived? By Hardwick Ch. J. As it doth not appear, that the father is dead, we must suppose him to be living; and in such case. the children could gain no fettlement, but what is derived from the father. Seff. C. V. 2. 182.

8. H. 12 G. K. and Westerham. An Englishman, whose settle- Father having ment was not known, married, had a child, and ran away: The no fettlement, child was then 9 years of age. By the court, the mother and child whether the ought to be settled, where the mother was settled before marriage. settled with the

M. 3 G. 2. St. Giles's and St. Margaret's. Sarah Etherington, with Dorothy her daughter aged five years, was removed from St. Murgaret's to St. Giles's, as being the place of Sarah's last legal settlement before her marriage, she having married an Irishman who had no fettlement: And it was adjudged, that Dorothy her daughter shall be settled with her mother in the parish of St. Giles, where her faid mother's fettlement was before marriage. Fol. 251.

T. 9 G. K. and St. Paul's Shadwell. Refolved by Eyre and Fortescue, that where the father being a foreigner had no settlement. the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be fent to the place of their birth. Seff. C. V. 2. 113.

H. 10 G. St. Giles's and Eversley Blackwater. It was held by the court, that where the father's fettlement cannot be found, yet if the mother's can, the child shall have the benefit of that. Seff. C. V. 2. 112.

H. 28 G. 2. St. John's Wapping and St. Botolph's Bishopsgate. A child of an Irishman having no settlement in England, and supposed to be on board a man of war in the West Indies, and of his wife being an Englishwoman, was adjudged to go with the mother, to the mother's settlement which she had before marriage.

9. A travelling woman, having a small sucking child upon Father and moher, was apprehended for felony, and fent to the gaol, and was ther both dead, hanged: This child is to be fent to the place of its birth, if it fettlement not can be known; otherwise it must be sent to the town where the known. mother was apprehended, because that town ought not to have lent the child to gaol, being no malefactor. Read. Poor.

And where a child is first known to be, that parish must provide for it, till they find another. Comb. 364, 372.

### v. Of settlement by apprenticeship.

The statutes relating to the settlement of apprentices, are these following; which I will first exhibit together at one view, and

then fet forth the judgment of the court of king's bench upon the feveral clauses of the faid statutes in their order.

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cerning the fettlement of apprentices.

By the 13 & 14 C. 2. c. 12. On complaint by the churchwar. dens or overfeers, within 40 days after any person shall come to settle in any parish, on any tenement under 101. a year; two justices (I Q.) may remove him to the place where he was last legally settled. either as a native, housholder, sojourner, apprentice, or servant, for the space of 40 days at the leaft. By the 1 J. 2. c. 17. The faid 40 days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing. And by the 3 W. c. 11. Not from the time of delivering such notice, but from the time of the publication of such notice in the church.

But by the faid act of the 3 W. If any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, thi no fuch notice in writing be delivered and published. 1.8.

By the 12 An. ft. 1. c. 18. If any person, after June 24, 1713, Shall be an apprentice bound by indenture, to any person residing under a certificate, in any parish, township, or place, and not afterwards having gained a legal settlement in such parish, township, or place; such apprentice, by wirtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have bis settlement in such parish, township, or place, as if he had not been bound apprentice. f. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless be shall bona fide, take a tenement of 101. a year, or execute an annual office in such parish.

(And consequently, not by apprenticeship.)

And by the 8 An. c. 9. and 9 An. c. 21. The master shall pay duty of 6d. a pound, for 50 l. or under, and of 12d. a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish apprentices, or out of publick charities. The sum given, to be written in the indenture in words at length. And besides the stamps before requisite, the indentures to be moreover stamped with another stamp, denoting the 6d. or 12d. a pound respectively. And if the sums are not truly inserted, or duties not paid or tendred, or indentures not stamped or tendred to be stamped within the times limited; such indentures shall be void, and not available in any court or place, or to any purpose what soever.

On complaint within 40 days ] This statute of C. 2. gives power to remove persons within the space of 40 days after they come to reside, but no power to remove them after the said 40 days; and being unremovable, and legally fettled is the same thing. The statutes of J. 2. and W. 3. do restrain such 40 days residence to be after notice in writing; but the latter clause of the statute of W. takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose,

for that the justices cannot upon the complaint of the overseers remove the apprentice from his master, that is to say, they cannot upon complaint of the overfeers make void the indenture between the master and his apprentice, by which the apprentice is bound to live with his mafter, and the mafter is bound to keep him; for this can only be done, upon the complaint of the master or apprentice: and continuing 40 days unremovable without notice, is the fame thing, as continuing 40 days removable, but not removed, after notice; and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many fettlements, as there are spaces of 40 days in the term of his apprenticeship; and where he serves the last 40 days, there is his last settlement: Consequently, he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office: Or, he may gain a fettlement, whilst his master shall gain none, as when he resides upon a tenement under 101. a year: And of consequence, the master may be removed, when the apprentice cannot be removed; and in such case the master shall be necessitated to apply to the justices, to compel the apprentice to go along with him.

This general opening of the statute will make way for the se-

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(1) H. 4 An. St. Bride's and St. Saviour's. A woman who Apprentice fets was settled at St. Saviour's, with her apprentice by indenture, tled, altho' the came and took a lodging in St. Bridi's, and there continued above settlement. 40 days with her apprentice, who ferved her there. This was held by the court, to be a fettlement of the apprentice at St.

Bride's. 2 Salk. 533.

(2) M. 8 G. 2. K. and St. George Hanower Square. Alice Apprentice fers Wheeler was bound by indenture a parish apprentice, to George ving another Lister, in the parish of St. George, where she lived above 40 master, but not days under the indenture, and gained a settlement: Afterwards, she was by parol agreement hired out by the said master to one Hall in the parish of St. Mary le bone, and there lived and lodged above 40 days, that is, for the space of one year and upwards, the said apprenticeship continuing; and the said George Lister her master received her wages, and found her cloaths: By the court, the apprentice is well fettled in St. Mary le bone. Seff. C. V. 2. 138. Str. 1001.

E. 9 G. St. Olave's and All Hallows. A person is bound apprentice to a master who lives in St. Olave's: Afterwards, the apprentice by his master's consent lives with another person in All By the court; He gains a settlement in the last place; for a person may serve his master in another parish or place; and altho' he serves another man, yet it is by consent of his master, and the benefit accrues to his mafter. Cases of S. 153. Str. 554.

M. 3 G. Parishes of Holy Trinity and Shoreditch. Parker Ch. J. delivered the resolution of the court. This is an order for the removal of one Ferrer from the parish of Holy Trinity to Shoreditch; by which it appears, that Ferrer was bound as an apprentice to one Truby, with intent that he should serve Green; which he did for three years: And it hath been infifted, that he being

bound to Truby, who lives in Trinity parish, his settlement is there; and not in Shoreditch, where the service was. But we are of opinion the justices have done right in sending him to Shoreditch, where the service actually was. It is the same thing as if Truby had turned him over to Green; in which ease there would have been no question, but he had gained a settlement in Green's parish. Str. 10.

Apprentice hiring, the master being run away.

(3) E. 10 G. Buckington and Shepton Bechamp. The master ran away: The apprentice hired himself for a year, and served the year. By the court; He gained no settlement, not being sui juris, nor of a capacity to hire himself; otherwise, had it been by consent of his master, or had his indenture been cancelled. of S. 155. L. Raym. 1352. Str. 582.

Note; In the Cases of Settlements, this case is reported under the name of K. and Shipton Curry; by L. Raymond, under the name of Buckington and St. Michael Sebington; by Sir John Strange, under the name of Packington and Chepton Beencham, None of all which feem to exhibit the true names of the contending parishes, for there are no such parishes as most of those here rehearfed; and therefore it is prefumed to infert the real names of the parishes, which these appellations seem most probably to denote, namely, Buckington and Shepton Bechamp. And here it may be proper to observe once for all, the great inaccuracy in the names of places and persons, which every where occurs in the books of reports, arising (as it seemeth) from two causes: 1. From the reporter's taking down the name in court by the found only, which oftentimes may cause a wide difference in the orthography. And, 2. From the hand-writing of the reporter perhaps not being very legible; the case being taken down in a hurry of the pen, and not published but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to restore such broken words, to their genuine and known originals; so as to read instead of Hedcome or Hedcorn, Hedcron; for Misserden, Missenden; for Trensbam, Frensbam; for Wooden, Woodend; for Yexford, Yokesford; for Eutoscater, Uttexeter; and many other fuch like.

Apprentice dif-miffed, but not discharged, hiring for a year.

(4) The fon was bound apprentice to his father, who afterwards gave up the indentures of apprenticeship, but did not cancel them: Then the fon was hired into another parish for a year, and ferved the year; and being likely to be chargeable, he was fent by an order to the parish where he lived as an apprentice; because, the indentures being not cancelled, he still continued an apprentice there. Mod. Ca. 190. Dalt. 180.

Apprentice affigned by the master.

(5) E. 9 G. St. Olave and All Hallows. If a master assigns over his apprentice, and the apprentice ferves in pursuance of that affignment; he thereby gains a settlement: and it differs not whe ther he serves with one master or another; for he still serves by virtue of the first indenture. Seff. C. V. 1. 215.

13 W. Caftor and Aicles. A poor child being bound at Caftor, his mafter there affigned him over to another mafter, who lived in Aicles. And it was held, that the poor child should gain a settlement at Aicles, where his fecond mafter lived; for tho' the apprentice

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prentice was not assignable, yet that assignment was not merely yoid, but amounted to a contract between the two masters, that the child should serve the latter. So that this affignment is good by way of covenant, tho' it be not an affignment to pass an intereft. 1 Salk. 68.

(6) T. 12 G. z. K. and East Bridgeford. Upon a special order Apprentice asit was stated, that an apprentice upon the death of his master, was master's widow. with his own confent turned over by the widow (who had taken no administration) to another master, whom he served. court held it a good fettlement in the last parish, within the reason of the case of Holy Trinity and Shoreditch abovementioned, where the apprentice was bound to one master, but served another all the while in another parish, and there gained a settlement. Str. 1115.

(7) An apprentice well fettled, being with a master removable, Apprentice set-cannot be removed with him; but the master may complain on vable.

the covenant. Cafes of S. 211.

it a settlement was confirmed.

May remove him to the place where he was last legally settled for Forty days refithe space of 40 days at the least] H. 10 G. K. and Cirencester. dence successive-There was an apprentice bound in the parish, who lived there off ly not necessary. and on for three quarters of a year. Exception was taken, that this was no fettlement, fince he might not inhabit 40 days together. But by the court, That is not necessary; and the order for making

If any person shall be bound ] H. 3 G. 2. Newbury and St. Mary's Infant pauper A poor boy of 14, bound himself apprentice for 7 binding himself: years to a weaver. It was argued, that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the whole court, It did gain him a settlement; for an infant may make an indenture for his own benefit. Foley 154. Andr. 373.

Str. 579.

Shall be bound apprentice H. 9 G. 2. K. and St. Nicholas Ipf- Binding for four There was an indenture of apprenticeship, for four years; years. which the apprentice ferved accordingly: whereas he statute of the 5 El. requires, that it shall not be for less than 7 years. And the question was, Whether this should gain a settlement? By the whole court; This indenture was not void, but only voidable; and none could avoid it but the parties: And neither of the parties having taken advantage thereof to avoid it, the apprentice having continued under the same above 40 days, did thereby gain a settlement. Seff. C. V. 2. 162. Andr. 365. Str. 1066.

By indenture] T. 5 & 6 G. 2. K. and Mellingham. was bound by indenture; tho' not actually indented; and the fef-dentu floas adjudged the fettlement on the foot of that binding. Ex-dented. ception was taken, that this was a binding without indenture, and not good; and also whatever the writing was, the pauper was no Party to it, nor could be concluded by it: and a deed poll will not bind an infant, nor a poor person put out by the overseers without his own contracting, for the statutes which make such co-Mant binding upon them, do require that the binding be by in-VOL. II.

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denture. And by the court; The exception must be allowed, and the order quathed. Seff. C. V. 1. 330.

Inhabitancy to be where the party lodges.

And inhabit in any town or parish] M. 11 G. St. John Baptist and St. James's Bishop Cannings. Binding and ferving will not make a settlement, but the settlement must be by inhabiting; which cannot be but where the party lodges. L. Raym. 1371,

E. 3 G. K. and St. Olave's Jury. An apprentice is bound to a cobler, who keeps a stall in one parish, lies in another, and the boy in a third; and the fessions adjudge the settlement where the stall is, because the service was there. But by the court, The boy has gained no fettlement in any of the three parishes; for the stall is not sufficient to give him one, the master lying in another parish,

And the order was quashed. Str. 51.

T. 3 G. St. Mary Colechurch and Radcliffe. A boy was bound apprentice to a feafaring man, and ferved him for a quarter of a year in the day time on land, in the parish of St. Mary Colechurch, but lay every night on shipboard in Radeliffe. But the justices apprehending the settlement to be where the service was, fend him It was moved to quash this order, and was likened to the aforesaid case of the cobler. By Parker Ch. J. A man properly inhabits where he lies; as in the case where the house is in two leets, he is to be summoned to that in which his bed is. And the order was quashed. Str. 60. Cases of S. 105. Foley 159.

Apprentice to a certificate per-

Apprentice—to a person residing under a certificate and not afterwards having gained a fettlement] By these words it is evident, that if the master gains a settlement under his certificate, the apprentice is then at liberty to gain a fettlement, as if the mafter had no certificate.

Such apprentice—shall not gain any settlement in such parish, town-Ship, or place M. 14 G. 2. Dunchurch and Petham. An apprentice was bound to a certificate person, and assigned by him to a person that lived in another parish, and went and lived there accordingly; and the question was, whether he gained any settlement under such assignment and service. By the court; The statute has only regard to the parish where the certificate person resideth, to prevent the apprentices of such persons gaining settlements there; and whether the binding was to a certificate person or not, is not material as to a third parish: and adjudged, that the apprentice

gained a settlement. Seff. C. V. 2 149. Str. 1147.
T. 13 G. 2. K. and Eost Bridgeport. A person was bound in one parish, his mafter dies, and he is affigned to a certificate man in another parish, and is afterwards affigned over by him to a third person who was not a certificate man; and the question was, whether he could gain a fettlement under this last assignment: And it was held clearly that he could. Nelf. Poor. - And this third mafter might possibly inhabit in the same parish in which the certificate person lived; and the reason is, because the apprentice in such case is not looked upon as the apprentice of the certificate person, but of the executor of the first master, who was no certificate person.

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No person who shall come into any parish by a certificate, shall he adjudged by any all what soever to gain a settlement - unless he shall take a tenement of 101. a year, or execute an annual office] H. 6 G. Ivinghoe and Stonebridge. Upon a special order of fellions, the case was stated for the opinion of the court; that one Richard Plower was bound apprentice to John Emerton, who was legally fettled in Ivinghoe; that he served part of his time there, and then the mafter went with all his family as a certificate man to Stonebridge, where he purchased an estate of the value of 60 1. and after fuch purchase the apprentice lived with him fix months till the apprenticeship expired; and because the statute provides, that the apprentice of a certificate man shall gain no settlement in the parish to which the master goes by certificate, therefore the justices adjudge the settlement at Ivinghoe, where the binding and great part of the fervice was. But by the court, We think the settlement is in Stonebridge; for according to the case of Burclear and Eastwoodhay, E. 5 G. when a certificate man makes a purchase, he immediately ceaseth to be there in nature of a certificate man, and becomes a fettled inhabitant: and in this case here is service for fix months, as an apprentice, in a parish where the mafter was legally fettled, which is more than fufficient to give a settlement to the apprentice. Str. 265.

Not available in any court or place, or to any purpose whatsoever Indenture not H. 4G. 2. Cureden and Leiland. Upon a special order of settlement, it was stated, that a poor boy was bound out apprentice by indenture, and the master had 20 s. paid him; that he served three years; but that the master never paid the duty of 6d. in the pound according to the 8 An. c. 9. s. 39. which fays, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to Fortescue J. who went the circuit: And he held it a settlement, because the master had fix months to pay the duty in; so that during those fix months a fettlement was gained; and it should not be in the power of the master to defeat it by matter ex post facto. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the king's bench, the order was quashed; for they faid, it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And though it was a hard case, they could not break through the positive words of the act, Str. 903. Seff. C. V. 2. 134. Andr. 364.

vi. Of settlement by service.

In like manner as under the last head, I will first fet down the whole law relating to the subject before us, and then the adjudged cases upon the several branches thereof.

By the 13 & 14 C. 2. c. 12. On complaint by the churchwardens Statutes conor overfeers, within 40 days after any person shallstome to settle on cerning settle-Q 2 any

#### (Settlement by fervice.) 10002.

any tenement under 101. a year, two justices (1 Q.) may remove him to the place where he was last legally settled either as a native, housholder, sojourner, apprentice, or servant, for the space of 40 days at the leaft.

But by the 1 J. 2. C. 17. The forty days continuance shall not make a settlement, but from the time of delivering notice in writing.

And by the 3 W. c. 11. From the publication of such notice in the church.

But by another clause in the faid act of the 3 W. If any unmarried person, not having child or children, shall be lawfully bired into any parish or town for one year; such service shall be adjudged and deemed a good settlement therein, tho' no such notice in writing be delivered and published.

And by the 8 & 9 W. c. 30. Whereas some doubts have arisen, touching the settlement of unmarried persons, not having child or children, lawfully bired into any parish or town for one year, it is enacted and declared, that no fuch person so bired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same ser-

vice during the space of one whole year.

By the 12 An. st. 1. c. 18. If any person after June 24. 1713. shall be a hired servant with any person, who did come into, or shall reside in any parish, township, or place, by means or licence of a certificate, and not afterwards baving gained a legal settlement in fuch parish, township, or place, such servant shall not gain any set-tlement in such parish, township, or place, by reason of such hiring or service, but shall have his settlement as if he had not been an bired servant to such person. 1. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall bona fide take a lease of a tenement of 101. a year, or Shall execute an annual office in such parish: (And consequently shall

gain no settlement by service.)

General exposition of hiring and fervice.

On complaint within 40 days By the statute of C. 2. persons became settled, if not removed in 40 days. But whereas people came privately into parishes, and continued perhaps 40 days, before they were publickly known to be there; therefore the flatute of the 1 J. 2. did provide, that such 40 days should not gain a fettlement, but after the time of delivering notice in writing to the overfeers, that such person was come to inhabit in such parish. And whereas in that case, the overseer to whom such notice should be delivered, either thro' ignorance or wilfulness, might conceal fuch notice from the inhabitants; therefore the 3 W. did provide, that fuch 40 days should be accounted from the time of the publication of such notice in the church, and not otherwise. then by the subsequent clause of the statute of the 3 W. it is enacted, that if any unmarried person, not having child or children, shall be lawfully bired into any parish or town for one year, such service shall be adjudged a good settlement therein, tho' no such

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notice in writing be delivered and published: And the reason thereof is this, because that such notice would not avail; for that the justices, upon complaint of the overseers, who are no parties to the contract, cannot make void the contract between the mafter and fervant, by which the fervant is bound to continue with his master, if he requires it. And therefore upon this act, if the fervant was hired for a year, and ferved 40 days under that hiring, he was not removable, and gained a fettlement; and so in every place where he ferved 40 days under fuch hiring, he there gained a fettlement; and where he ferved the last 40 days, there was his last fettlement. But this easy method of acquiring fettlements, causing fervants to become insolent, at last the statute of the 8 & 9 W. was made, which enacteth, that no fuch person so lawfully bired into any parish or township shall be adjudged to have a good settlement there, unless he shall continue in the same service during the space of one whole year. But if he shall continue in fuch service during the space of one whole year, his settlement in all other respects shall be as before; that is to say, every continuance of 40 days unremovable during fuch fervice for the year shall be deemed a settlement; and where he continues the last 40 days, there is his last settlement. But there hath been much doubting, what shall be deemed a hiring for a year, and also what shall be deemed a service for a year, within the sense of these statutes; and what relation such hiring and service shall bear to each other: The arguments for and against which on each side, in the adjudged cases hereafter following, will be the better understood, from this short historical account which hath been given, of the progress of the law relating to this matter.

Two justices (1 Q.) may remove him] But it hath been observed Whether the ferbefore, that the justices, upon the complaint of the parish officers, want may be recannot remove the fervant from his master; because they cannot master. upon such complaint dissolve the contract betwixt the master and his servant, to which contract the officers are no parties; for that can only be done upon the complaint of the master or servant. Therefore if a maid servant shall happen to be with child, which child is likely to be born a bastard; yet if her master is willing to keep her, the parish cannot remove her; but the master, if he pleases, may complain to a justice of the peace, that she is less able to perform the service, and the justice may discharge her, and then the parish by order of two justices may remove her.

But altho' regularly the fervant cannot be removed from the matter, yet the master may be removed from the servant; as if the servant hath gained a settlement in the parish, and the master hath gained none, which may often happen, the fettlement of the fervant no way depending upon the fettlement of the master: In such case, if the parish will remove the master, they cannot remove the fervant; but the master may complain to the justices, who may compel the fervant to go along with him.

If any unmarried person, not having child or children] Here are Unmarried pertwo points considerable; one is, where a widower has a child, son. which hath gained a fettlement of its own, diffinct from the

Unmarried per-

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elsewhere.

### 19002. (Settlement by service.)

father's fettlement; the other is, when a person unmarried is hired, and marries before the year's service is compleated.

(1) E. 10 An. Antony and Cardigan. A man having a daughter, which daughter was married and fettled elsewhere, hired himfelf for a year, and served the year: By the court, he is a single person within the meaning of the act, tho' not expressly within the letter of it. The meaning of the statute was, that he might not bring any consequential damage to the parish, which he cannot possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service.

Cases of S. 7. Foley 131.

Servant marrying during the fervice. (2) E. 1 An. Faringdon and Witty. A fervant hired for a year, ferved half a year of the time, and married. The question was, Whether the justices, on complaint of the overfeers, could make an order to remove him to the place of his last legal settlement? By the court, The contract between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet without that, and upon complaint of the officers only, it could not be dissolved. And the marriage doth not hinder the service; the contract continues; and if the man performs his service, he gains a settlement. 2 Salk. 527.

The same resolved, M. 1 G. 2. K. and Sutton. Sef. C. V. 2.

121

And the reason hereof perhaps might be this; The statute of the 3 W. fays, if fuch unmarried person shall be hired for a year, fucb service shall gain a settlement; that is, a service for forty days: and the latter statute doth not cause this 40 days service to be no fettlement, but only suspends the same, until it shall appear, whether the party shall serve out his year; and if he doth serve out the year, then such 40 days service is a good settlement. So that in this case, it may seem, that the settlement in effect was obtained before the marriage. It doth not appear what would have been the event, if the servant had married before he had served 40 days. If he should be deemed in such case to have gained no fettlement, then it will follow, that a fervant marrying, after he hath ferved a confiderable part of the year, shall be settled where he served the last 40 days before such marriage, provided he serves out the year. But concerning this, there hath been no adjudication.

But fince it is evident from the cases abovementioned, that such marriage will not regularly hinder the servant's settlement, if the parish would be rid of him, it must be upon complaint of the master to a justice of the peace, that by such marriage he is become less fit for his service; and if the justice shall see cause to discharge him, he may after such discharge be removed by order of two justices to his place of settlement.

But there is one case, wherein such marriage of it self will defeat the service, and consequently the settlement thereby; and that is, where the maid servant is married to her master, or the man servant marries his mistress: for there the contract of service

is determined by the parties themselves.

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Shall be lawfully bired into any parish or town for one year] Whether the hi-These words do introduce one great subject of debate, namely, final be by one What shall be deemed a sufficient biring for a year within these intire contract. flatutes, by virtue whereof a person shall be intitled to gain a settlement? Concerning which it hath been refolved as follows:

H. 10 W. Bayly's case. A maid servant contracted to serve from Lady-day till Michaelmas following; which she did accordingly: and then made a new contract with the same master, to ferve him for a longer time; and accordingly did ferve him upon that contract, till April following; in all, above a year. And by the court, Tho' this was not an intire contract for a year, yet it

gained her a fettlement. 3 Salk. 257.

On the contrary, in the case of Horsbam and Shipley, M. 12 An. A person was hired from May-day to Lady-day, then from Lady day to May-day; and fo on again another year: The question was, whether this gained a settlement? And the court were opinion, it did not; for they faid the hiring must be for a

Foley 134.

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And more expresly, in the case of Dunsfold and Ridgwick, M. o An. A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon ferved a year in one continued intire fervice, but by feveral hirings. By the court; It ought to be one intire contract, and one intire service; the one is required by the statute, as well as the other. If a fervice under feveral contracts shall gain a settlement, one that serves by the month, by the week, or by the day, may, if he continues a year, gain a fettlement. One may hire by the day. for charity; but there is danger of being chargeable in hiring fuch a person by the year. For such a term as a year, it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. 2 Salk. 535.

Perhaps it may add fome weight to the scale in favour of this latter opinion, if we attend to the following observation; namely, That altho' the service for a year depends upon the statute of the 8 & 9 W. which makes such service necessary to gain a settlement, yet the biring for a year depends solely upon the statute of the 3 W. upon which statute the law was this, that if a person was hired for a year, and served 40 days, he gained a settlement. But no one will fay, that if he was hired for half a year, and served forty days, he should thereby gain a settlement; for that is against the statute. And the 8 & 9 W. hath made no alteration at all as to the hiring, but only lengthened the time of

the fervice.

Moreover, the word lawfully feems to be of some confideration. The statute says, if such person shall be lawfully bired for one year; and the following statute, reciting the lawful biring, lays, if such person shall be so bired as oforesaid: Now what is a lawful hiring? Not a hiring for half a year; for that is by virtue of no law. On the contrary, Lord Coke (1 Infl. 42.) says, if a man retain a fervant generally, without expressing any time, the law shall construe it to be for one year, for that retainer is according to law. The statute of the 5 El. says, that no servant, as

therein mentioned, shall be hired by any means or colour for less time than one whole year. The statute of the 2 & 3 P. & M. concerning the highways, says, that all persons not being hired servants by the year shall be liable to work at the highways. The statute of the 20 G. 2 says, that if a servant hired by the year shall complain to a justice upon the retainer, he may be relieved. And in general, the law never looks upon any person as a servant, who is hired for a less term than one whole year; otherwise they come under the denomination of labourers. Now being lawfully hired, can mean nothing else, but being hired according to law. And being hired according to law, is the being hired for one whole year, and not otherwise.

Concerning this hiring for a year, these other resolutions have

been made: viz.

Hiring for eleven months.

(1) T. 3 G. Ranton and Haughton. Order specially stated: John Evans was hired with Ralph Trubshaw of Haughton, from Ash-Wednesday till Christmas, and served him that time. Then he went away from him, and staid with his father in Ranton, for about a week. Then he returned to the said Ralph Trubshaw, and was again hired with him for 11 months, and ferved him the faid 11 months: Then departed from the faid Ralph Trubshaw, and took his cloaths with him, and was absent one week. Then he returned to the faid Ralph Trubshaw, and was hired with him for eleven months, and accordingly ferved him; and then left that service, and went to his father in Ranton, and stayed about one week. Then the faid John Ewans ferved one John Sutton of Haughton aforesaid for about 3 weeks; then returned to Ranton aforesaid, and stayed for about a week: and then returned to the faid John Sutton, and hired with him for 11 months, and served within a fortnight or 3 weeks of the last 11 months, where, by agreement with the faid John Sutton, to avoid a fettlement in the parish of Haughton aforesaid, he left him, took his cloaths, and went into the parish of Gnosall, and there continued about a week; then returned to the faid John Sutton, and continued with him fo long as to make up his service of the last 11 months; and 3 weeks before Christmas, the said John Evans hired himself again to the faid John Sutton, for another 11 months, and served him from that time, till within 3 weeks of Michaelmas following, and then came away and married. The question was, Whether these several hirings were sufficient to gain a settlement in the parish of Haughton? Parker Ch. J. faid, this was an apparent fraud, and different from all the other cases. Pratt J. faid, I doubt we must take the law to be, that there must be a hiring for a year, and a fervice for a year: Here the fessions have found it specially, and there is neither hiring nor service for a year: And suppose a man that lives in a parish incumbred with poor, hires a servant for 11 months only, to prevent his gaining a fettlement, how can this hiring and service gain a settlement? And as to the fraud, if there is any, the justices of the peace are judges of that. Eyre J. was of the same opinion with Pratt J. Powys J. being absent. Afterwards, in Easter term, after long debate and confideration, the opinion of all the court was, That these hirings and service in the parish 137. (2) nuall

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parish of Haughton were not sufficient to gain a settlement. Fol. 137. Str. 83.

(2) E. 5 G. 2. K. and South Cerney. At Northleach are an- Hiring a few nually held two meetings for the hiring of fervants, the one on days after Mithe Wednesday before Michaelmas, the other on the Wednesday after. chaelmas to Mi-The pauper was hired the Wednesday after Michaelmas, to serve to Michaelmas following; which he did. It was urged, that this being a hiring according to the course and custom of the country, was a fufficient fettlement. But by the court; This is no fettlement upon the face of it; there must be a hiring for a year, and that cannot be dispensed with. Seff. C. V. 1. 156.

H. 5 G. Combe and Westwoodbay. Michaelmas-day was on Thursday; and a person was hired upon the Saturday following, to serve till Michaelmas: And it was held to be insufficient to gain a fettlement, being not a hiring for a year. Str. 143.

(3) M. I G. Peperharow and Frensham. A person is hired Hiring for 2 or 3 the third of October to serve till Michaelmas following, and at Mi-days short. chaelmas the master says, stay two or three days, and I will pay you. Adjudged a settlement, because fraudulent; and if this were allowed, there would be no fuch a thing as a fettlement; for every person would hire a servant two or three days after the quarter day, purely to evade the statute. Cases of S. 80. Lu. Ca. in L. & E. 293.

(4) T. 13 An. Jeffop and Miffenden. Sarah Barnes lived with Hiring with her father for a year as a hired fervant, in a little cottage upon one's father. the waste, for 10s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no

be grown old. Fol. 142.

(5) T. 13 G. 2. King's Norton and Campden. Order specially Hiring to spin at stated. Mary Calcut was hired for a year, to spin yarn at 18 d. so much a stone. a stone; and was to provide herself with victuals and lodging. She spun the whole year, and boarded and lodged at her master's, allowing 2s. a week for the same: but upon her examination she faid, that by her contract she thought her self at liberty to play or be absent from her work as long as she pleased, only that she was not at liberty to work for any other master. By the court, This case hath all the requisites of the statute, and is a good settlement: for in fact here is a hiring and fervice for a year; and what her apprehension was, or whether she was paid by the year or by the quantity of her work, was immaterial. Str. 1139. V. 2. 146.

ground of fraud; for it was to live with her father, who might

(6) T. 6 G. 2. Lidney and Stroude. Upon a special order of Hiring condifessions, it was stated, that a maid was hired for a quarter of a tionally. year, and if she and her master liked one another, she was to continue the whole year, and have 31. for her year's wages; that the staid the year out, and had her 3 l. And this on debate was held to be a settlement. Str. 950.

H. 8 G. 2. Chipping Wycombe and New Windfor. A person was hired to go a month on liking, at 51. a year wages, but to part on a month's wages, or a month's warning on either fide;

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in the parish and continued under this agreement above a year in this fervice. and the wages were paid quarterly. And adjudged a good fettle.

ment. Seff. C. V. 2. 163.

H. 16 G. 2. Atberton and Barton. A person hires himself for a year at 4 l. wages, and either master or servant to be at liberty to determine the contract at the end of any quarter, upon a month's notice. And it is flated, that he ferved the year out, but that at the time of the hiring the servant declared, he made the agreement in that manner, to prevent losing his former fettlement, And upon this case, the two justices and sessions held it no settlement. But the court on debate quashed both the orders; for this is the common fort of hiring for a year, with an intention to stay together (as in fact they did); and if this should be determined not to gain a fettlement, it would overturn great numbers of fettlements that fubfift on fuch hirings. Str. 1182.

Hiring by implication.

(7) E. 13 G. 2. Wandsworth and Putney. A boy came to live with Mr. Falkner without any hiring; and then his master told him, that if he stayed a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's fervice was an affent in fact, and that it gained a fettlement; but referred the matter back to the fessions to be more fully flated. Seff. C. V. 2. 188.

Service where no contract did appear.

(8) M. 13 G. A young woman lived with her grandmother for four years, on an allowance of meat, drink, washing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that the might have left the grandmother at any time; it was adjudged not a hiring within the statute. Seff. C. V. 2. 120.

What shall be for a year.

Unless such person shall continue and abide in the same service beemed a service What shall be deemed the same service within the meaning of this explanatory flatute, hath been much controverted. Concerning which there have been the following refolutions:

Hiring for a year, year, but not under the fame

(1) Within about a year after this statute of the 8 & 9 W. was and service for a made, was the following adjudication; H. 10 W. Case of the inhabitants of South Moulton. A maid servant was hired for half a year; which time she served: and then for another year, and ferved half of that Rokeby, Turton, and Gold (Holt Ch. J. being absent) held it to be a settlement; because the statute designed only that the party should serve a year. L. Raym. 426.

Another case in the same term is cited by Mr. Blackerby and others, under the name of Stephenton and Overton, where there was a hiring and service from Lady day to Michaelmas, and then a hiring for a year from Michaelmas to Michaelmas, and a service for half that year; and it was adjudged a good settlement. But whether the Chief Justice in this case was present in court, or whether this is the same case with the former, under a different name (which fometimes happeneth in the books of reports) doth not appear. Which is only observed in this place, for that no other case hath occurred, wherein this point came in question during the great n made, The

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#### (Settlement by fervice.) 10002.

ring the time of Lord Ch. J. Holt, whose opinion controuls a very great number of cases about settlements, the laws having been made, and the doubts thereupon having happened in his time.

The next case wherein the like was adjudged, was in the time of L. Ch. J. Parker, viz. that of Brightwell and Westhallam. E. 1 G. There was a hiring and service from 3 weeks after Michaelmas to Michaelmas, and then a hiring for a year, and fervice for 11 months. The Ch. I said, If there was a service for a year, on a hiring from week to week, and then a hiring for a year, and ferving for 40 days, that he should adjudge that a set-The reason is, because till the last statute was made, an hiring for a year, and 40 days service made a settlement; in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work. So 40 days is a good settlement to an apprentice, in respect of his skill. and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by 40 days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes. Seff. C. V. 1. 87. Foley 143.

On the other hand, in the case of Dunsford and Rudgwick, M. 9 An. in the first year of Lord Ch. J. Parker, Mr. Foley fays, the court declared, that there ought to be one intire contract, and one intire service for a year, pursuant to that contract.

Foley 133.

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And Mr. Blackerby, in reciting that case, says, it was then held, that there must be one intire hiring, and one intire service in pursuance of such hiring, for a whole year, that must make a settlement. Black. 244.

But it must be observed, that this was not properly the point in question; for the question there was, whether a hiring for two half years should be deemed a sufficient hiring, and not what

should be a sufficient service under such hiring

We proceed therefore to the case of K. and Aynhoe, M. 1 G. 2. A person was hired for a quarter of a year, and served that term; then he was hired for a whole year, and served three quarters. And this was adjudged a fettlement. There was cited for it, Brightwell and Westballam, Overton and Stephenton. Lord Ch. J. Raymond said, the case of Westballam was express to the point, and he would not break into it; but if it had been res integra, or a case not adjudged before, he should have thought it ill. Here the service was made previous to the hiring for a year. greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, tho' not according to their own opinion. Seff. C. V. 2. 119. Fol. 144.

And this being settled, there followed the cases of Hanner and Ellesmere, M. 4 G. 2. Eardisland and Lempster, H. 6 G. 2. Fyfield Magdalen and Westower, M. 11 G. 2. wherein a hiring and fervice for part of a year, and then a hiring for a year, and fervice for so much of that year as made up a year's service in the

whole, were adjudged sufficient settlements.

But whatever may be the rule in the court of king's bench. where the matter feems now to be fettled in a good measure, upon the authority of Brightwell and Westhallam as above mentioned; it is certain the point is far from being fettled among the justices in the feveral counties. And in truth, the reasons on the one hand may to many persons seem as strong, as the reasons on the other. For it is certain, there can be no lawful fervice, but un. der a lawful hiring; and if there can be no lawful hiring but for one entire year, it should seem that there can be no lawful ser. vice but for one entire year, pursuant to such lawful hiring. And the case of Brightwell and Westballam seems to proceed upon a supposition, that nothing more is required by the statute, but hi. ring for a year and service for a year; whereas the words of the statute are, that the party shall be bired for a year, and shall continue and abide in the same service during the space of one whole year: and it doth not feem very evident, how with any propriety of language, part of one service and part of another service can be called the same service: And it seems a little abfurd, as Lord Raymond observed in the case of Aynhoe abovementioned, that the fervice should begin before the hiring; for upon the former statute, of the 3 W. the law was not, if a man should first serve for some certain time, and afterwards be hired for a year, and under fuch hiring should serve so long as would make up the former fervice to forty days in the whole, he should thereby gain a settlement, no more than if an apprentice had been bound and served only 20 days under the indenture, he should have become settled thereupon, by adding 20 days which he had ferved before the binding, to the 20 days which he had ferved after: But the statute of the 3 W. required first a hiring for a year, and then a service for 40 days under that hiring: and this statute of the 8 & 9 W. makes no alteration therein at all, but only by enacting that the faid 40 days residence shall not gain a settlement, unless the party shall continue in the same service for the space of one whole year - Not to mention, that for any thing which appears in the cases as above recited, the authority of Brightwell and Westballam became established, not fo much from the incontestable evidence of the thing it felf, as from the unwillingness of the court to unsettle a point once solemnly established, in order that things may at length come to a certainty. But as in fact the case is very far from being settled among the justices in the country, it would spare much trouble in removals and appeals, if the parliament by another explanatory law would finally declare, what shall be deemed a lawful hiring, and what shall be deemed a lawful service, so as to gain a set-

Same fervice, same master.

(2) E. 4 G. Ivingoe and Solebury. A person was hired for a but not with the year to one Knight, who rented a farm in Ivingoe, and lived with him half a year: The master lets the farm to one Smith, and the servant lives the residue of the year with Smith in the farm, wi Knight, end of th question gain a f good fett another ! here beir first mast alter the brought Caf. of E. 17

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farm, without any words passed about dissolving the contract with Knight, or making any new contract with Smith. And at the end of the year, the fecond master paid him his wages. question was, if this shall be deemed the fame service, so as to gain a settlement. By Pratt Ch. J. and the court; This is a good settlement: If a master command his servant to live with another for a certain time, it is a service to the first matter; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages, did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. Seff. C. V. 1. 121. Caf. of S. 109. Str. 90.

E. 17 G. 2. Beckles and Leorustoff. A person was hired to a blacksmith for a year, at 3 1. a year. During the year, the mafler gave him leave to work with another smith for three days, with another for a week, and with a third for a fortnight, and agreed the fervant should have the advantage of it; after which he returned and staid out the year, and the master by his consent deducted the proportion of wages for the time he was away: And upon this state of the case, the sessions held no settlement was gained, the first contract being dissolved. But by the court, The order must be quashed, for this is not a dissolution of the contract, but a licence to be absent; and both parties considered it so, by continuing together to the end of the year. Str. 1207.

E. 15 G. 2. Ladock and St. Enoder. A person was hired for a year, and served half a year; when the master died: the executor who lived in another parish, asked the servant if she would ferve out the year with him: she did so. And now, on the authority of the case of Ivinghoe, the court held it a settlement in the executor's parish; for the last service is not to be considered as a new agreement, but a continuation of the first.

(3) E. 11 G. K. and Whitechappel. A person was hired for Same service, 5 years, to work at a glass house in Whitechappel, at the rate of but not in the 10s. a week; but never lodged with his mafter in the house any same place. part of the time, but at another house in the parish: By the court, he has gained a fettlement there; for being hired to ferve above a year, and having ferved and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish. Seff. C. V. 2. 114. Foley 146.

1. 12 An. Silverton and Ashton. A servant maid was hired for a year in the parish of Ashton, where she served half a year; then her master, and she with him, removed to the parish of Patshall, where her master took another farm; the servant continued with him in the parish of Patshall for the other half year: And the question was, whether she gained any settlement in either of these places; and if she did, in which of them? By the court; Here is what the act requires, a hiring for a year, and a fervice for a year. For it is the same service; and the statute doth not tie it down to one place. If a person is hired to a master in one Parish, and goes with him into another parish, and serves him for

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one whole year; the parish he continues last in for 40 days before the end of his year, is the place of his fettlement: and the reason why the 40 days gains a fettlement is, because he comes there with his mafter, and you cannot remove him from his mafter, and having continued with him 40 days unremovable, he gains a fer-

tlement. Foley 188. Cof. of S. 23.

T. 8 G. St., Peter's in Oxford and Chipping Wycombe. special order of sessions it appeared, that the master of the Oxford stage coaches hired a servant for a year, to stay in an inn in Wycombe where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in Oxford. The question was, Where that servant gains a fettlement, or whether any by that fervice? And by the whole court, he gained a fettlement in Chipping Wycombe, though his

master never lived there. Str. 528. Foley 200.

H. 1 G. 2. Bishop's Hatsield and St. Peter's in St. Alban's. There was an order of two justices, to remove Henry Langley from Hatfield to St. Peter's. Upon appeal to the fessions, they state the case specially, that Langley was hired in St. Peter's by Mr. Arnold (who had no fettlement there) for one year, to ferve as his huntiman; that Mr. Arnold had a dog kennel in St. Peter's, where Langley was dieted and served the year: but inasmuch as Mr. Arnold himself had no settlement there, they vacate the order which fent him to St. Peter's. But by the court, The order of sessions must be quashed; for this is exactly the case of the servant employed on the road, to look after stage horses belonging to one who lived elfewhere, and yer the fettlement was adjudged to be

where the fervice was. Str. 794. T. 8 G. St. Peter's in Oxford and Fawley. Dr. Clavering's fister lived with him at Christ Church, and hired a servant for a year, who was fettled in St. Peter's. His fifter afterwards goes to Fawley upon a visit; and she, with her servant, stayed there above 40 days, and afterwards came back again to Christ Church, where the fervant ended the year's fervice, being not 40 days after her return. The question was, Whether this servant gained any settlement at Fawley, living with her mistress who was only a visitor? And by the whole Court; The settlement of the servant doth not at all depend on the fettlement of the master; for if a master hire a servant for a year, and after remove from one parish to another during that year, it may be properly faid that the servant is hired in every parish he shall go into with his master; and the parish where he lives with his mafter the last 40 days of his year, is the place of his fettlement. And adjudged that the fervant was fettled at Fawley. Foley 194. Str. 524.

A person was hired for a E. 4 G. 2. Goring and Molefworth. year, and ferved the year. The person, to whom he was hired, lived at Goring, and kept a boat which navigated from Goring to London, but the fervant was not 40 days in the whole year at the parish of Goring, but served out the year on board the boat. By the court; This was no fettlement at Goring. Seff. C. V. I.

327. Caf. of S. 219.

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I. 18 G. 2. St. Peter's in Sandwich and Goolafton. A fervant was hired for a year, during which he, with his master's leave, went to fea upon the herring fishery, but hired another to do his work in the mean time: he returned at the end of three weeks after the expiration of his year, fettled with his master, and received his whole year's wages. This the fessions held was not a service for a year; but the court held it a fettlement; faying, he was to be considered all the while as in the service of his master, and the person he found to do his work was his servant, and not the master's: wherefore the order was quashed. Str. 1232.

(4) M. 1 G. Pawlett and Burnham. A person was a covenant Same service fervant for a year, but went away 3 weeks before his year was within 3 weeks; out, by his own and his mafter's confent; and was abated 6 s. of fervant. his year's wages for it. It was objected, that being a covenant servant, this doth import that it was by deed, and then the consent cannot discharge the covenant. By the court; Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his fervant to gain a fettlement nolens volens? As to the covenant being by deed, and fo the service continuing, perhaps he might bring an action on the covenant, and as to that point the fervice continued; but not as to gain a fettlement, where the statute faith he must ferve for a year, which is not in this case. Cas. of S. 84. Foley 187. Seff. C.

(5) M. 9.G. 2. Seaford and Caftle Church. On a special order Same service of fessions, it was stated, that a person was hired for a year, which within 12 days, he served till the last 12 days, when he went away without the master's leave, and staid till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on confideration, that if they once allowed this absence for 12 days at the end of the year (which differed from an absence in the middle of the year, which was purged by taking him again) they should not know where to stop, it was determined that he gained no fettlement. Str. 1022.

A person is hired for a year; and Same service (6) E. 7 G. K. and Islip. in the year's fervice his mafter gives him leave to go and fee his days. mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected, that his staying to see his mother without leave, was a defertion of the service, and the time he staid away takes so much off from a compleat service for a year. But by the court; This will not prevent the fettlement; for the master's taking him again is a purgation of the offence, and no interruption of his fervice. Caf. of S. 129. Str 423.

In the same case it was stated, that the servant for fix days was lick, and incapable of any service: And it was objected, that therefore he could not gain a fettlement, which is to be acquired only by a service for a year, but here he did not serve for fix days, and so there wants so much of a service for a year. But by the court; A fervant that lies thus under the vification of god, which befals him not through his own default, is and must be taken to be all the while in the fervice of his master; and if this exception

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was to be allowed, it might prevent all the fettlements in the

kingdom. Str. 423.

Another circumstance in the same case, was this: The servant. 3 or 4 days before his fervice expired, defired leave of his mafter to go to a fair, to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return, until the time of his service was expired. By the court, This is nevertheless a settlement: The request of the servant is a reasonable request, and the law will not suffer a master to shew himself so inhuman to his servant: A master cannot turn off his fervant 2 or 3 days before the year expires; if he does, the fer. vice in point of law continues, and he gains a fettlement notwith. standing. Caf. of S. 129. Str. 423.

H. 4 G. 2. K. and Preston. A person served under a hiring, his whole year within 5 days, and then left his master by consent, the parish officers where he lived having first given him 201, to leave the parish. The justices held this service to be no settlement, and stated the case specially. It was objected, that this departure was fraudulent. But by the court; The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without question have flated it to have been so; but that not being done, we cannot intend any fraud, nor that the party has gained any fettlement, it being agreed on all fides, that he has not ferved his year. Nell.

Poor.

T. 8 G. Eeftland and Westborseley. The fact was thated specially on an order of sessions, that a servant was hired for a year, and the day before the year expired the master told him, that to prevent his gaining a fettlement in that parish, he should go away immediately, which the fervant refused to do, infisting to serve out the year, whereupon the mafter turned him out of doors. And the court held this to be such a fraud in the master, as should

not prevent the settlement of the servant. Str. 526.

Same fervice continued beyond the year.

(7) M. 19 G. 2. Croscombe and St. Cuthbert's. A fervant was hired for and served a year in Croscombe. He continued to serve on there without any new agreement for a quarter of a year, when the master removed into a house in St. Cuthbert's, where the fervant continued with him for half a year longer. The question was, Whether this was a fettlement in St. Cuthbert's within the reason of those cases that have held the settlement to be gained where the last 40 days service was? And the court held it a setment there, for it is still a continuing in the same service within the meaning of the 8 & 9 W. c. 30. though there is no new agreement. And upon the whole there has been between this master and servant a hiring and service for above a year. Str. 1240.

Whether a certificate person can gain a fettlement by fervice.

Unless be shall take a tenement of 10 l. a year, or execute at annual office] E. 15 G. 2. K. and Sherborne. A certificate man has a fon born in the parish to which he was certified, who when 16 years old hires himself as a servant to a button maker in the foe wit 1

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same parish, and serves a year. And upon considering the words of the statute, which declare, That no person who comes in by certificate shall be adjudged to gain a settlement by any act whatfoever, except he takes 10 /. a year, or executes an annual office, the court held, that the fon of the certificate man was equally within it; and that therefore the hiring and fervice in this cafe gave him no fettlement. Str. 1165.

The same ruled so again, H. 19 G. 2. K. and Bray. Str. 1164.

### vii. Of settlement by marriage.

1. Heretofore it hath been somewhat doubtful, what shall be What shall be deemed a sufficient marriage, so as that a woman shall gain a set deemed a sufficitlement thereby; and the courts have been favourable in admit-ent marriage fo ting marriages, altho' not firifly folemnized according to the tlement, laws of the church; but now by the statute of the 26 G. 2. c. 33. a great distinction is made, between marriages solemnized before the 25th day of March 1754, and after that time: for by the faid statute it is enacted, that after March 25, 1754, all marriages except in Scotland, and except the marriages of jews and quakers, where both the parties are jews or quakers respectively) which shall be folemnized without licence or publication of banns, or in any other place than a church or a publick chapel (unless by special licence from the archbishop of Canterbury), or without the consent of parents or guardians, (where either of the parties, not being a widower or widow, is under the age of 21) shall be null and void to all intents and purpofes whatfoever. And these requifites must appear, from the entry thereof in the register book for that purpose.

2. It feemeth to be a good general rule, that a woman mar- Wife shall folrying a hulband, who hath a known fettlement, shall follow the low the hushulband's settlement. And altho' in the case of Uppoterce and band's settle-Dunswell, M. I. G. it was held, that the wife shall not gain a ment. settlement with the husband, until she hath lived with him 40 days unremovable as part of his family; yet afterwards, in the case of K. and Pinceborton, M. 3 G. it was agreed by the court, that a wife is to be fent to her husband's settlement, tho' she never lived with him there. And in the case of St. Giles's and Eversley Blackwater, H. 10 G. the widow was removed to the deceased husband's settlement, tho' she had never been there; and it was fuled by all the court, that the removal was good, and that she must be fent to the last legal settlement of her husband, having acquired no other fettlement fince his death. Caf. of S. 89.

Seff. C. V. 1. 80, 105. V. 2. 112.

3. It seemeth also to be agreed, that a wife can gain no settle- Wife can gain ment, separate and distinct from her husband, during the cover. no settlem nt

4. It feemeth also to be agreed, that a woman marrying a huf- Case where the band that hath no known fettlement, doth not lose her former husband hath no fettlement which she had before marriage. But the great point settlement, of difference hath been, whether fuch fettlement continues to her during the coverture, or it is suspended during the coverture, VOL. II.

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hufband.

and only revives after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage, shall by barely proving such marriage, avoid the settlement with them during the husband's life; or whether in order to avoid such settlement it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where.

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In relation to which case, where the husband hath no known

fettlement, it hath been adjudged as follows:

E. 2 G. St. Giles's and St. Margaret's. A woman marries a foreigner; and her husband dies. By the court; She must be sent to the place of her settlement before marriage. Seff. C. P. 1. 97.

H. 12 G. Westbam and Chidding stone. It was stated, that a single woman, tettled at Chidding stone, was married to a man who is since dead, but his settlement did not appear: And by the court, Her settlement before marriage stands. Str. 683.

M. 1 G. Uppoterce and Dunswell. A woman is settled in Dunswell; and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in Uppoterce, and dies there. Two justices remove the widow to Dunswell, where she was settled before marriage. And by the court; Where it appears that the husband in his life time had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a Scotchman and a foreigner, and she shall not lose her sormer settlement. Cas. of S. 89. Self. C. V. 1. 80.

Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong

cases have been adjudged.

M. 12 An. Dunsford and Wilborough Green. A woman who was fettled at Wilborough, marries Archibald Player, a Scothman, who had gained no fettlement in England. Two justices remove her from Dunsford to Wilborough, the place of her settlement before marriage. Exception; this is a married woman, and by her marriage she ought to be settled where her husband was, and this cannot be right; for if the justices may send away a wise, it is making a divorce between husband and wise; and if he is a Scotchman, they ought to send her, as part of his family, to the bordering counties of Scotland, according to the act of the 39 El. c. 4. f. 6. The court held, tho' she was a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce, it was none; for the husband might come to her as well at Wilborough Green as at Dunsford. Foley 249. Cas. of S. 31.

Note; the act of the 39 El. only says, that the Scotchman himself, if a vagrant, may be so sent; but says nothing of his

family.

M. 3 G. St. Giles's and St. Margaret's. Sarah Etherington was fettled at St. Giles's; and marries an Irishman. By the court;

The marriage will not put her in a worse condition than stre was before; and they held that she continued her settlement, notwith-

standing her marriage. Caf. of S. 98.

H. 12 G. K. and Westerham. The order specially stated by the sessions, was this: It appeared to the court, by the testimony of Elizabeth Pinchen, that the said Elizabeth Pinchen was, at the time the said order was made, a married woman, and that her husband was one Thomas Pinchen, who was born in Weltsbire, but in what place or parish he had a settlement, he never informed her, nor doth she know; but that he is run away, and still living, for what she knows. By the court; She ought to be settled where her settlement was before marriage. Foley 252.

Seff. C V. 2. 110.

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On the contrary, H. 12 G. 2. Stretford and Norton, the case was thus: An English woman married an Irish man who had no fettlement in England. He ran away; two justices remove the wife to the place of her settlement before marriage. And it was urged, that there could be no pretence that this separated her from her husband; and if she cannot be sent thither, she can be sent no where. But by Lee Ch. J. It is now a fettled point, that by the marriage the woman's fettlement is suspended, whether the hufband has or has not a fettlement; for otherwife the justices might separate husband and wife; and therefore to make the order good, it should have appeared that the man was dead.—And the order was quashed by the whole court. And there were cited these two following cases; viz. T. 1 G. Fanwick and Marson. It was there declared by the Ch. J that the settlement of a woman, who marries a vagrant, is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife her felf, because a husband and wife, being as it were but one person, cannot be parted. T. 9 G. Shadwell and St. John's Wapping. One Ridley, a vagrant, having no fettlement, married a woman who had a fettlement in St. John's Wapping, and had four children by her born in Stepney. And it was held, that the children were not fettled in the place where they were born, but where the wife had a settlement; but that this was sufpended during the coverture, and it revived again upon the death

of the husband. Andr. 307. Seff. C. V. 2. 185.

Finally, in the case of St. John's Wapping and St. Botolph's Bispopsgate, H. 28 G. 2. it is said to have been adjudged as sollows: Margaret Kinley having gained a settlement in St. Botolph's parish by hiring and service, afterwards married Thomas Kinley an Irishman, who had no settlement in England. About two years ago, the husband entred on board a man of war bound for the West Indies, but Margaret heard he was living about two months ago; and the question was, Whether her settlement which she had before marriage ceased, or was in suspence, during the coverture, and she should be looked upon as a casual poor; or she should be sent to the place of her settlement before marriage. After sull consideration, Ryder Ch. J. delivered the opinion of the court:

1. It is certain St. Botolph's was once her settlement, and that is not disputed.

2. That settlement continues till she gains a new

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3. That she has never yet gained a new one. To the fecond point he faid, a fettlement is a permanent thing; it lasts during life, or till a new one is acquired: and there is no case to be found, where it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, whether she gained any new fettlement by marriage, but whether her old fettlement was difcontinued by her marriage with a person that had none. It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already. I must own the case of Stretford and Norton is not to be distinguished from the present, and is against our present opinion. To be sure we must have great regard to former resolutions in this court; but we must judge upon the cases before us. How that case came to be determined so, I do not know, but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement is only suspended during her husband's continuance with her; and when he leaves her, it revives.

Whether the wife may be removed from the husband. 5. H. 9 G. St. Michael's and Nunry. Order of removal, reciting that the wife of a poor person who is now living, had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of St. Michael, she is therefore removed thicher. It was moved to quash the order, because it did not appear, the husband was, at the time of the removal, in the parish of St. Michael, so that it may be they sent the wise away from the husband. But by the court, We cannot intend he was not; if he was in the parish from which she was sent, that indeed would vitiate the order; but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed. Str. 544.

6. Although it is generally true, that no fettlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good: for the two following cases do

proceed upon fuch supposition.

M. 11 G. The overfeers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where her husband was settled: By the court; If there is a conspiracy, to let lands of 10 l. a year to a poor man in order to gain him a settlement, or to make a certificate man a parish officer, or to send a woman big of a bastard child into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed, for want of averment, that the woman was last legally settled in the parish relieved by her marriage. Nels. Conspir. Sess. C. V. 1.

Marriage fraudulently procured.

H. 6 G. 2. K. and Parkins. A fingle woman of Studley, big with child of a baftard, was fent back to Studley. Parkins overfeer of Studley, threatned with all the feverity of the law, to force her to marry a stranger of another parish, against both his and her confent, he giving five guineas to the husband, and keeping him in liquor. By the court; Shew cause why information should not go. Seff. C. V. 1. 176.

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7. What hath been discoursed under this head, hath been con-Settlement of the cerning the fettlement of the wife with the husband: There is husband with the another case, concerning the hushand's settlement with the wife; which is, when a Scotchman or Irishman, or the subject of a foreign realm, shall marry an English woman having an estate, and shall reside with her upon the same 40 days unremovable. question how far this shall gain him a settlement, depends upon what hath been faid before, concerning the fettlement of foreigners, in the beginning of this treatife concerning fettlements.

### viii. Of settlement by continuing 40 days after notice.

By the 13 & 14 C. 2. C. 12. On complaint within 40 days after any person shall come to settle in any tenement under 101. a year, two justices may remove him to the place where he was last

legally settled for 40 days.

But by the 1 J. 2. C. 17. The 40 days continuance of fuch person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing, of the bouse of his abode, and the number of his family, if he have any, to one of the churchwardens or overfeers of the parish to which he

shall remove. 1. 3.

And by the 3 W. c. 11. The faid 40 days continuance of fuch person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overfeer. Which said notice in writing, the said churchwarden or overseer shall read or cause to be read publickly, immediately after divine service, in the church or chapel, on the next lord's day, when there shall be divine service in the same. And the said churchwarden, or overseer, shall register or cause to be registred, the said notice in writing, in the book kept for the poor's accounts. 1.3.

And if any churchwarden or overfeer shall refuse or neglect to read or cause to be read such notice in writing as aforesaid, he shall (on proof thereof by the oath of two witnesses before one justice) furfeit for every offence 40 s. to the party grieved, by distress, by warrant directed to the constable of the parish or town where the offonder dwells; and for want of sufficient distress, the said justice shall commit him to the common gaol for one month. And if any churchwarden or overseer shall refuse or neglect to register, or cause to be registred, such notice in writing; he shall, on the like conviction, forfeit 40s. to the use of the poor of the parish or town where the offender dwells, to be levied as aforesaid; and for want of sufficient

diftres,

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### 10002. (Settlement by notice.)

distress, then the said justice shall commit him as aforesaid, for the time aforesaid. 1.5.

After any person shall come to settle] But no foldier, seaman, shipwright, or other artificer, or workman in his majesty's service, shall have any settlement in any parish, port town, or other town, by delivering and publication of notice in writing, unless the same be after a dismission out of the service. s. 4.

In any tenement under 101. a year] But this hath been always understood of persons coming to settle upon such tenement, as farmers thereof, and not where the same is their own proper estate; and therefore a man's coming to settle upon his own estate is not within the act.

Where he was last legally stitled for 40 days H. 10 G. Case of Cirencester. It was held, that living 40 days successively was not necessary; and Mr. J. Fortescue said, that living 40 days off and on, is making the case stronger than living 40 days together in a parish. Seff. C. V. 2. 40. Str. 579.

And, H. 12 G. 2. Souton and Sidbury. It was admitted by the counsel, and held by the court as a point indisputable, that it is not necessary upon this statute, that the inhabitancy shall be for

forty days successively. Andr. 345.

Notice in writing] But persons executing a publick annual office, or paying parish rates, or being servants for a year, or apprentices by indenture, shall thereby be settled without notice in writing.

3 W. c. 11. f. 6, 7, 8.

And in general, all persons not removable may become settled without giving notice; for the notice is only intended where the person is removable; for if he is not removable, the notice is to no purpose: for continuing 40 days unremovable without notice, and continuing 40 days removable but not removed after notice published, do equally gain a settlement.

In writing] H. 3 G. 2. Aldenham and Abbots Langley. Upon a special order of sessions, it was stated, that a poor person forty years ago came into a parish, and lived there ever since; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Those are not annual offices in the parish, and the 1 J. 2. c. 17. was purposely made to avoid these constructive notices, and require notice in writing; and therefore they held it no settlement. Str.

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H. 8 W. Talbury and Foston. A person exercised the trade of a blacksmith; was publickly employed by the parishioners, by the bailist of the lord of the manor, the vicar, and the justice. The question was, Whether this publick way of living was not tantamount to notice in writing, which was only designed to prevent clandestine entries and living. By the court; This might perhaps have satisfied the statute of the 1 J. 2. but the 3 W. hath particularized the notice, and what shall be tantamount to it, and what not; but this is not among the particulars of the statute, and therefore is not such notice as the law requires. 2 Salk, 476. Foley 114.

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Publication of the notice] In the case of K and Chertsey, The banns of matrimony of a poor person were published in the church; and it was insisted, that this was a notice sufficient, being in writing, and published in the church: But by the court; This is not sufficient; for the other requisites by the 3 W. must be observed; and that being an explanatory act, cannot be taken by equity. 5 Mod. 414.

After all, this kind of fettlement, by continuing 40 days after publication of notice in writing, is very feldom obtained; and the defign of the acts is not so much for the gaining of fettlements, as for the avoiding of them, by persons coming into a parish clandeslinely: for the giving of notice is only putting a force upon the parish to remove. But if a person's situation is such, that it is doubtful whether he is actually removable or not, he shall by giving of notice compel the parish either to allow him a settlement uncontested, by suffering him to continue 40 days; or, by removing him to try the right.

### ix. Of settlement by paying parish rates.

By the 13 & 14 C. 2. c. 12. Forty days inhabitancy shall gain a settlement; By the 1 J. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing; And by the 3 W. c. 11. from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish, shall be charged with, and pay his share, towards the publick taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same, the no such notice in writing be delivered and published. 3 W. c. 11. 1.6.

But by the 9 & 10 W. c. 11. Persons residing under a certificate shall gain no settlement, by being rated to and paying any such levies, taxes, or assessments.

If any person M. 13 G. Solontongham and Worplesdon. The landlord was rated to the poor, for the tenement as being in his hands, and the tenant paid the rate. By the court; The tenant doth not gain a settlement, unless he be both rated and pay. Foley 128. Seff. C. V. 2. 122.

And this kind of practice may be fometimes, on purpose to avoid a settlement. But it lies in the power of the justices to adjudge whether or no it shall be deemed a fraud.

E. 4 G. 2. Kinfare and Kingswinford. A person rented a tenement, and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of Richard Cotes that rented the tenement before, was kept in the levy books. By the court; This was no settlement, because he was not assessed as well as paid. Foley 120.

H. 8 W. St. Mary he more and Heavy tree. The rates were charged, not on the person, but on the house: Adjudged, that this rating and payment made a settlement, 2 Salk. 478.

Shall be charged with and pay M. 9 G. 2. K and Bovindon. It was held, that payment to the poor doth not give a fettlement,

## 10002. (Settlement by office.)

unless the party was rated, for the rating is the act of the parish, and not the other. And the settlement ariseth from the parish's giving that evidence of their being satisfied of his ability. Str. 1022.

M. 7 W. Talborn and Boston. If a man is taxed, and after taxation stays 40 days, it is no settlement unless he pay the tax, 2 Salk. 523.

The publick taxes or levies of the said town or parish? No person who shall be affested to the scavenger's rate, or to the repairs of the highways, and shall duly pay the same, shall be deemed to be settled thereby. 9 G. c. 7. s. 6.

T. 9 An. Paying to the county bridge gains no fettlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the parish or town where he lives. Cases of S. 1.

H. 9G. 2. K. and Bramley in the borough of Leeds in Yorkshire. Two justices make an order to remove John Close, from Armley another township in the same borough, to Bramley, who appeal, and the sessions consirm the order, and state specially, that the said John Close, after his settlement in Bramley, removed with his samily, and inhabited and sarmed lands at Armley, for which he was charged and paid two quarterly payments to the land tax only. By the court; It is a good settlement, and the orders were quashed. Seff C. V. 2. 167.

But by the 21 G. 2. c. 10. Persons assessed to and paying the daty on bouses and windows, shall not thereby gain a settlement.

### x. Of settlement by serving a parish office.

By the 13 & 14 C. 2. c. 12. Forty days inhabitancy shall gain a settlement; By the 1 J. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing: And by the 3 W. c. 11, they are to be reckoned from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any publick annual office or charge, in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement in the same, tho' no such notice in writing he delivered and published. 3 W. C. 11. S. 6.

By the 9 & 10 W. C. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10 l. or shall execute some annual office in such parish, being legally placed in such office.

Publick annual office or charge, in the faid town or parish H. of An. Gatton and Milwich. A person being chosen parish clerk by the parson, served for several years, and received his sees and dues. By the court; It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and

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and has a family, they may remove him; but if they let him continue a year, none can remove him; for altho' he came in by the parson only, yet the parish paying him, it is a consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish. Cases of S. 241. 2 Salk. 536. Foley 123.

M. 9 An. St. Mary and St. Laurence in Reading. The question was, Whether the being churchwarden for a borough, and serving that office for a year in the borough, which extends it self into several parishes, is such a service of an annual office as will gain a settlement? By the whole court, it was held to be an office, the serving of which for one whole year, was sufficient to gain him a settlement in that parish within the borough, in which he lived.

Foley 121.

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H. 7 G. 2. Bisham and Cook. The sessions setting out the fact specially, adjudge the settlement of a poor person to be at Bisham. because when he lived in that parish, he executed the office of collector of the duties given by the 6 & 7 W. c. 6. on births and burials. It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: besides, it was not stated in the order, that this was an annual office, as it must be to give a settlement, within the express words of the act. On the other hand was cited the abovefaid case of St. Mary and St. Laurence in Reading. And by the court, The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not be a parish office, but a publick annual office in the parish. And as to its not being faid, that this man executed it for a year, we must take it he did so, because it appears on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It hath been held a fettlement in the case of the land tax, and why not in this? And the order was confirmed. Str. 411. Foley 124.

H. 2 G. St. Trinity and Garfington. It was held, that a perfon who was chosen a tythingman for a year, and served that year, was such an officer as thereby gained a settlement. Foley 123.

H. 9 G. Burliscomb and Samford Pewerell. The sessions on a special order adjudge, that executing the office of tythingman would not gain a settlement: But by the court, The order must be quashed, for this is an annual office in the parish, within the words and meaning of the act. Str. 544.

Certificate, &c] E. 8 G. 2. St. Maurice and St. Mary Calendre in Winchester. Upon a special order of sessions, it was held, that executing the office of constable in the city at large, gave a certifi-

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cate man a settlement in that parish where he inhabited; though he was appointed by the corporation in general, and acted through all the parishes in the city; for he executes an annual office in the parish, which are the words of the statute. Str. 1014. Seff. C. V. 1. 315.

And, E. 8 G. 2. K. and St. Mary Berkhamstead; The court feemed to be of opinion, that the executing the office of a parish elerk is sufficient for a certificate person to gain a settlement; for it

is an annual office and more. Seff. C. V. 2. 182.

M. 17 G. 2. Wingham and Selling. It was flated in a special order, that a certificate man, having notice that he was appointed borsholder, never took the oath of office, but once executed a warrant of a justice directed to the borsholder. And this the fesfions determined to be gaining a fettlement within the 9 & 10 W. c. 11. But by the court, The order must be quashed, for the words of the act are, being legally placed in fuch office, that is, being the officer both de facto and de jure, which this man was not, the order stating negatively, that he was not legally placed therein, which can only be by an appointment and swearing in. Str.

E. 18 G. z. Sheepsbead and Melborne. A person was certificated from Sheepshead to Melborne, and stayed there ten years, during which time the lady Elizabeth Hastings conveyed lands to trustees for several charities out of the profits, and amongst others, the sum of 10 l. a year to the charity school at Melborne to be paid to the vicar there for the time being. In a special order of sessions it was slated, that the certificate man officiated as schoolmaster several years, and received the 10 l. a year from the vicar: and this the fessions held, gained him a fettlement in Melborne, where they declare he had a freehold estate; and so had both the requisites to obtain a fettlement to a certificate person, namely, a tenement of 101. 2 year, an executing an annual office: But by the court, The order must be quashed: for it doth not appear how he came into this employment, and the legal right to receive the falary is in the vicar, who not caring to officiate himself, has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less to a certificate man. Str. 1225.

### xi. Of settlement by renting 101. a year.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 101. a year, two justices may remove him to where he was last legally settled for 40

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any all whatsoever to have gained a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 101. or shall execute an annual office in such parish.

Shall come to fettle] For taking land in the parish, of whatever value it shall be, without coming to reside there, will not gain a fettlement.

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# poor. (Settlement by 101. a year.)

In any tenement ] Here it occurs to be confidered, what shall be a tenement within this act, fo as to gain a fettlement. Concerning

which it hath been adjudged as follows:

H. 10 An. Ewelin and Rentcomb. An order was drawn up fpecially to have the opinion of the court, Whether renting of 2 quater mill of 10 l. a year, would make a settlement? And by the whole court clearly, a mill is a tenement, and the renting thereof must gain a fettlement within the statute, 2 Salk, 536. That is, if the party lives therein, or within the parish.

T. 10 G. 2. Butley and Benball. The question was, whether renting a windmill at 14 l. a year, gained a fettlement; it having been determined that a watermill did. It was faid, those are always habitable, but the others often are not. But by the court, It

is the same as if he had rented land of that value.

H. 12 G. Stone and Kniver. Upon a special order of sessions, it was stated, that a poor person rented a concy warren and a cottage upon it at 10 l. a year, which the justices were of opinion did not gain him a settlement. But by the court, A mill hath been held to be a tenement within the statute, and why not this? It is his ability to pay 101, a year, that is the foundation of the fettlement, and whether he pays it for a house of habitation, or for a warren which brings him in a profit, is not material: the order of sessions must be quashed. Str. 678. Seff. C. V. 2. 109.

As to the case, Whether it shall be one entire tenement; it hath

been adjudged as here followeth:

E. 3 G. 2. Minchin-hampton and Bifley. Order specially stated: A poor person rented, in the parish of Bifley, lands of the yearly value of 81. from his father, an house of the yearly rent of 11. 10 s. from his uncle, and the fame year took the pasture catage of a piece of ground, in the faid parish from Michaelmas to Candlemas, and paid 12 s. for the fame, which piece of ground was worth 61. a year. It was urged, that this was a good fettlement, because during those three months the man was not removable. But in this case, the court held, that taking the passure of a piece of land was not more than taking the herbage, or than taking the common, which could not be esteemed part of a tenement within the meaning of the statute; but seemed to think, that if the words had been, that he had taken a passure ground for 3 months, that would have made a good settlement. Seff. C. V. 2. 132. Str.

So that it seemeth that this was only an error in the state of the case by the sessions, in saying that he rented the herbage, instead of faying that he rented the land; and that if this last item could have been deemed any part of a tenement, the whole 3 parcels together, being within the same parish, would have made up one fufficient tenement whereby to have gained a fettlement: that is, supposing the renting the same for three months would have satisfied the statute, on which point judgment was not given, the order (which made the same no settlement) being confirmed by the court,

for the reason abovementioned.

But that two tenements in the same parish, rented by the same person, are sufficient within this statute to gain a settlement, will further

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gain a In further appear from the following report: M. 1 G. North-Nibley and Wotton under Edge. A person rented an alehouse at 51. 2 year, at Lady-day, for a year; and in May following rented a piece of land for 61. a year; held the same for two months; and ran away. It was held, that it was not necessary the messuage or tenement should be rented of one person; tho' it be rented of several, yet in him it is but one, and the statute is satisfied, he being of ability to be trufted with a tenement of 10%. a year. Befides, the running away did not alter the case; he being still liable to pay the rent; the contract continued: and living there but 40 days, the contract being for a year, it is good. The statute says, renting a tenement of 10 l. a year, but doth not fay for what time; as to that it is filent: By Parker Ch. J. If he had taken it for a month, it had not been a settlement; for there, altho' he pay a rent proportionable to the year, yet he is not thought of ability, or sufficient to be trusted with it for a whole year. Cases of S. 86. Seff. C. V. 1. 73. Foley 79.

Furthermore; It is to be considered, How far the same tenement, but lying in different parishes, shall gain a settlement: As to

which it hath been adjudged as follows;

T. 3 G. South Sydenham and Lamerton. A person rented a tenement of 10 l. a year, being one intire tenement, but lying in two parishes. The question was, Whether this gained a settlement? By the court; If the tenement be intire, tho' the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8 l. lie in one parish, and a tenement of 3 l. in another. Str. 57. Sef. C. V. 1.

115. Foley 81.

But the question in this case only was, Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10 l. but lying in different parishes, shall gain a fettlement: So that the determination in this case, as to this latter point, was extrajudicial. And the reason given by the court in this case doth extend as well to different tenements, as to one intire tenement, viz. The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a tenement of 10 /. a year; now the man's fufficiency is not the less, because 6 l. a year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10 l. a year in any one parish, and it would be hard to adjudge that therefore they gain no fettlement. Str. 58. Foley 81.

M. 3 G. 2. Elsted and Hollingbourn. The case was this: A person rented a tenement, consisting of a farm house and lands of 12 l. 10 s. a year; which house and lands laid contiguous, and had been usually letten together and occupied by the same person, but the house and so much of the land, as together amounted to 9 l. a year, lay in one parish, and 3 l. 10 s. in another parish.

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parish. By the court, this was held to be a settlement; on the authority of South Sydenham and Lamerton. Seff. C. V. 2. 130. Str. 849.

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Further yet; It remains to be confidered, how far two diffined tenements, one being in one parish, and another being in another parish, shall be deemed a sufficient tenement within the act, whereby to gain a settlement: For altho' in the case of South Sydenham and Lamerton aforesaid, the court seemed to be of opinion that two such tenements would not gain a settlement; yet that (as hath been observed) was not the point in question. And in the case of K. and Sandwich, T. 8 G. 2. It was resolved as follows:

A person rented a tenement of 30s. a year in one parish, and then took a parcel of land of 121. a year in another parish, and occupied that, and continued in possession, and lived upon the former tenement during that time. The court held, that thereby he gained a settlement in the parish where he lived. Seff. C. V. 2. 166.

And the same will appear further confirmed, when we come to speak of certificate persons gaining settlements by 10 l. a year.

Under 101. a year] If the tenement is under 101. a year, the julices upon complaint within 40 days, have power to remove the person coming there to reside; if it is not under 101. a year, they have no power to remove him; and continuing unremovable for 40 days, he thereby gains a settlement.

Upon which it is observable, that payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due. For the settlement is not suspended, as in the case of a hired servant, until he hath ended his year; but so soon as he hath resided 40 days, he is settled without more: even as a servant hired for a year, became settled in 40 days, before the statute of 8 to 9 W. and as apprentices are still settled in 40 days, without any regard to serving out their time.

Ten pounds a year] Upon these words the value of the tenement is considerable, or what shall be deemed a tenement of 10 l. a year sufficient to gain a settlement. Concerning which it hath been adjudged as follows:

H. 13 G. 2. Southwald and Yokesford. A person took a house, and agreed to pay 10 l. a year for it; and the landlord agreed to make new buildings. These improvements were never made, and the house worth but 6 l. a year. By the court; The seffons must judge upon the sacts; they have stated that the agreement was for 10 l. a year; this is evidence of the value; but the justices have a right to inquire into the real value, and that is but 6 l. a year, and there is no sact to shew this 10 l. a year. Therefore adjudged, that this was no settlement. Sess. C. V. 2. 198. Str. 1127.

I. 3 G. South Sydenham and Lamerton. Order specially stated: A person took a lease of a tenement, for 99 years, determinable on 3 lives, and paid his fine, and the rent reserved was but 7 l. but the real value was 13 l. By the court; The quantity of the

rent is not material, but the value of the tenement. If there be a lease of lands worth 10 /. a year, and a fine be paid, and 201, only referved, it makes a fettlement; so if no fine be paid, or no rent referved, yet if the tenement is worth 10 l. a year, it makes a fettlement : for the fettlement depends on the value of the tenement, and not on the rent. Sef. C. V. 1. 115. Fol. 81.

Str. 57. T. 14 G. 2. Kirton and Weston. Order specially stated: A perfon rented a tenement at 10 l. a year, which had been let fo for 5 years before; but the tenement had been usually let at 71. a year, and when the faid person was told it was too dear, he said he did it to gain a fettlement; but the fessions did not adjudge it a fraud. Upon this it was urged, The confideration here must be, whether upon the state of this case, he rented a tenement under the value of 10 l. a year; for if not, it is a good fettlement; for they faid, they would not hold this to be fraudulent, it not being so adjudged, and evidence of fraud is not sufficient; and as to the value, they must take it to be according to the rent, unless the contrary was stated; for as it is a removal of a man from his farm, it should be shewn to be under value. Seff. C. V. 2. 141, Str. 1156.

Unless be (the certificate person) shall really and bona fide take a leafe] T. 9 G. K. and Little Dean. It was stated, that a man took a lease for 7 years, and objected that it might be only by parol, and then it is void for the whole, and there can be no fettlement. But by the court; Then it should have been stated to be by parol; we must take it to be by deed, otherwise it is no And the order was confirmed. Str. 555.

H. 8 G. Cranly and St. Mary Gui ford. Upon a special order of fessions it was stated, that a certificate man agreed with the lessee of a mill, that he should occupy the mill, and pay 12 l. a year; that there was no under lease or allignment, but in purfuance of that agreement the certificate man occupied the mill two years, and paid the rent. The softions adjudge it no settlement. But by the court; The order must be quashed: for if this be not an absolute lease for a year (as Eyre J. said it was, the rent being referved as the rent for a year), yet it is undoubtedly a leafe at will, which is sufficient to gain a settlement. Str. 502.

A lease of a tenement ] M. 9 G. St. John's Hertford and Amwell. A certificate man took a farm of tol. a year, part of which was in St. John's, and part in Amwell; but the greatest part, together with the house, being stated to lie in the parish that received his certificate, the court held it a settlement there. Str. Caf. of S. 148.

H. 8 G. 2. St. Mary Calendre and St. Thomas. It was faid, that these acts have been liberally expounded, and that renting 101. a year in different parishes will avoid a certificate. Seff. C. V. 1. 315.

E. 4 G. 2. Case of Stapleford in Leicestersbire. A person took 3 1. a year in the place he was certificated to, and 401. a year in

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the next parish, but lived where the 3 l. was; and it was held a

fettlement there. Str. 849.

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Upon the whole, notwithstanding what hath been so often mentioned above, as to the supposed sufficiency of the tenant to stock the tenement upon which he comes to reside, yet the statute takes no notice of that; and therefore, altho' it may be a good general reason to suppose, that a person of such ability is not likely to become chargeable, yet such ability doth not seem to enter as any necessary ingredient into the settlement; and if the landlord will trust the tenant, it seemeth that the parish hath no remedy, unless the justices shall adjudge it a fraud. And in the case of giving security for the rent, it hath been determined as follows:

T. 10 G. 2. Butley and Benball. A person rented a windmill at 141. a year; but gave security for the rent: It was objected, that this was no settlement, for that the soundation thereof is the credit of the party, which fails in this case. But by the court; Giving security for the rent doth not alter the case; for he that has credit to give security, has credit to pay rent. S. C. V. 1.

320. Andr. 3.

And it may be observed upon this case, that it requires no great ability to stock a windmill.

#### xii. Of settlement by a person's own estate.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10 l. a year, two justices may remove him.

And by the 9 & 10 W. c. 11. No certificate person shall gain a settlement, but by renting 101. a year, or executing an annual

office.

Upon which two statutes the following cases are considerable:
1. How far a person, having an estate of his own, tho' under

tol. a year, shall gain a settlement thereby, within the said sta-

tute of the 13 & 14 C. 2.

(1) E. 11 An. Harrow and Edgware. A person settled at Person not re-Harrow, went into the parish of Edgware, and purchased a co-movable from pyhold estate for life, and lived therein 4 or 5 years, and died. his own. And as this was a tenement under 10 l. a year, the question was, upon the 13 & 14 C. z. whether this gained him a settlement at Edgware? It was argued, that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, tho' not worth 10 l. a year. And by Parker Ch. J. and the court; Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, tho' less than 10 l. a year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement. Foley 257.

E. 13 G. 2. Harsfield and Furley. On a special order of seffions, relating to the settlement of a boy of 8 years and a girl of 6, it was stated, that the mother of these children had an estate of 41. a year in Furley, where she and her husband lived and had

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these children: that she dying, the husband became tenant by the curtesy; and whilst such, he took 30 l. a year in Harsfield, and lived one year there with his two children, and then died: that the children being sound with their grandmother at Farley, were both removed to Harsfield: which order the sessions confirmed. And now the court, upon argument, confirmed the orders as to the girl, but quashed them as to the boy. For as to the boy, he was tenant in see of the 4l. a year. And though it was not stated, that he was actually upon that spot; yet it was enough, that he had such an estate in the parish, from which he could not be removed. But as to the daughter it is otherwise; she could demand no maintenance out of her brother's estate: and it was never yet determined, that children should go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the parish where they are settled. Str. 1131.

T. 7 G. 2. K. and Sandridge. Thomas Perchin by indenture demifed to Thomas Gates the father, a cottage at 5 s. a year, which was the full value, for 99 years. The leffee held it till his death, and devifed it to Thomas Gates his fon. And the queftion was, whether the fon, as executor, being intitled to the term, shall gain a fettlement by inhabiting in such cottage? By the court; Where a man lives upon his own, is a case of a very tender nature, and the law will not unsettle him: Persons to be removed under the statute of C. 2. are those that wander from place to place, and not those who live upon their own estate: And adjudged, that he gained a settlement. Seff. C. V. 1. 200.

Str. 983.

E. 3 G. South Sydenham and Lamerton. A person possessed of a lease for years dies intestate; if the next of kin shall be said in law to be settled there, was the question: It was held not; he has only a right, which he must pursue by taking out letters of administration, and no right is vested in him till that is done. Cos.

of S. 103.

T. 10 G. 2. Faringdon and Widworthy. The pauper settled at Faringdon, removed to Widworthy, and lived there with his father in a cottage house of 30s. a year, working as a day labourer. The father died intestate, possessed of the said cottage for the refidue of a term, determinable on lives, leaving the pauper and The pauper's brother took his distributive share of another fon. his father's estate in goods, and the pauper himself, after the father's death, continued in the cottage for 5 or 6 years, until the leafe was determined: After which, and fince the making out the order for his removal, he took out administration to his father. And the sessions quashed the said order, adjudging him to be settled at Widzvorthy. But by the court, He had gained no fettlement at Widworthy at the time of making the original order, because he then was plainly removable, as he had not taken out the administration. And quashed the order of sessions. Andr. 4.

M. & G. Mursley and Granborough. Sir John Fortescue demissed a cottage of 30s. a year, to one Eden for 99 years, referving 12d. rent: Eden assigns the term to one Gadden in trust for his wife for life, and then in trust for his son, during the re-

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mainder of the term: The fon dies, and leaves a wife, who as administratrix to her husband became intitled to this term, and she grants this cottage for 24 years, excepting two rooms, in which two rooms she lives, and marries one John Chappel. The question was, whether Chappel, as husband of an administratrix, who was intitled to the trust of a term only, and being intitled to a chattel in another's right only, was removeable by the 13 85 14 C. 2. And by the court, he is not: this is not a taking of a tenement under 10 l. a year, for the 12 d. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no settlement were quashed.

Str. 97. Seff. C. V. 1. 122.

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M. 11 G. Ashbrittle and Wyley. A poor man built a cottage, upon the waste belonging to my lord Pembroke, without his licence, who never offered to disturb the man in his possession, and he lived in this cottage for 30 years, and by his will left 3 guineas in the hands of his executors to purchase this cottage of my lord Pembroke. Upon his death, Elizabeth his only child, and heir at law, entred into the cottage, and after married one Barrow, and they lived in the cottage, and were in quiet possession for three quarters of a year, and then fold it. The question was, whether the daughter, and her husband Barrow, had gained a settlement by virtue of this inhabitancy, in the parish of Wyley, in which their cottage was. Mr. Reeve argued, that this inhabitancy gained no settlement: The cottager was a disseisor, and had no right to build upon the waste, and was at any time removable by the lord of the waste, and if he might have been removed within 40 days, his long possession shall give him no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage, tho' never fo long, could give him no fettlement: and if the cottager had no right of fettlement, none claiming under him shall be in a better condition. The statute of the 31 El. prohibits the building of cottages, therefore the erection of one is unlawful, and shall have no privilege or encouragement. I admit if one inhabits by virtue of a lease, or other good title, for 40 days, he gains a fettlement. But the inhabitancy in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the court, who held it clearly to be a good fettlement. And tho' it was further objected, that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. And by all the court it was held, that when a man hath fuch a possession as he cannot be removed from, and hath enjoyed that possession forty days, he thereby gains a fettlement; and that is the reason why a copyholder or leffee for years gains a fettlement by an inhabitancy for 40 days; for in those cases, the justices of the peace cannot determine his right: this present case is very strong; for the 30 years possession of the cottager, without interruption, would have Vol. II.

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been a good title in an ejectment; and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any case but in a real action. Lord Ch. J. Raymond said, he had known recoveries upon a 20 years quiet pollession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defen. After to long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter who was heir to the cot. tager, and prima facie it is an inheritance in the daughter, and an estate by disseifin is in law a good estate, and a fee simple, till Wherefore all the court held, that the justices it be defeated. had no jurisdiction in this case; for they could not examine into the title to the land. And the fettlement in the parish of Wyley was adjudged to be good. S.J. C. V. 2. 115. Str. 608.

Purchase under 301.

(2). But there is one exception to all that hath been faid concerning a person's being settled by living upon his own estate; and that is, in the case of a purchase under the value of 30 l. which

is made by act of parliament, 9 G. c. 7. and is thus:

After Mar. 25. 1723, No person shall be deemed to acquire any settlement in any parish or place, by wirtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 301. botta side pails, for any longer or surther time, than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where he was last legally settled before the said purchase and inhabitancy therein.

The sum of 301 bona fide paid ] E. 13 G. St. Paul's Walden and Kempston. There was a special order stated at sessions. A person purchased a copyhold tenement in St. Paul's Walden; which with the sine, and sees paid to the court, amounted to 301 and it appeared by the same order, that the officers of the parish of Kempston had given him 405, towards paying his sine and sees. Therefore it was insisted, that this was fraudulent, and not a good purchase within the statute, sufficient to gain a settlement. But by the whole court; We cannot take notice of its being fraudulent, unless the justices had adjudged it so. And the order was confirmed. Foley 238.

E. 8 G. 2. Tedford and Waddington. On a special order of sessions it was stated, that Francis Gill contracted for the purchase of a house in Waddington, for 30 l. and paid 9 l, out of his own money, and the remaining 30 l. was by his order paid by another person, to whom the premisses were mortgaged for it; that he had lived upon it four years, when the mortgage was foreclosed, and he turned out: and the question being, whether he had gained a settlement hereby, the sessions adjudge that this was a fraudulent purchase, and consequently no settlement gained thereby. But by the court, The order must be quashed: the purchase money by the statute need only be 30 l. and the advancing the money by another, makes no alteration. And the fact being specially stated,

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we can judge as well as the fessions, whether it be fraudulent or not. The circumstance of his continuing four years, ousts all presumption of fraud. Str. 1014. Seff. C. V. 2. 164.

H. 15 G. 2. Cotleigh and Stokeland. An acre in Cotleigh, wherein a person had a lease for lives, was mortgaged to the pauper for 15%. When the mortgagor died, there was two years interest due to the pauper, and he also owed 181. 10s. to the pauper by bond and fimple contract. And it was agreed between the widow and the pauper, that he should administer, and take all but the houshold goods; which he did. And the fessions having held, that his taking to this acre, and living on it 8 years, did not gain a settlement under the act, which requires a bona fide payment of 301. The court now quashed the order, it being to all intents of law and equity the same as actual payment of the consideration money. Str. 1162.

2. How far a certificate person shall gain a settlement by an estate of his own, notwithstanding the abovesaid statute of the

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Burclear and Eastwoodhay. Abraham Hacket comes Whether a cor-E. 5 G. with a certificate into the parish of East-woodbay, and afterwards tificate person marries one Sarah Smith. Her father furrenders to her a copy may gain a fet-hold estate of 205. a year, and so the husband had it in her right. Hement by re-surted court. The man has gained a settlement in Fastanacher. By the court; The man has gained a fettlement in Eastwoodbay; own estate. for a man cannot be turned out of his own, be it never so small. And by Fortefcue J. the party here could not be removed; and not removable, and gaining a fettlement are the same thing. Then it was objected, that the person being a certificate person, he gains no fettlement, unless he rents a tenement of 101. a year, or exercises an annual office; and that statute being an explanatory act, is not it felf to be explained, and confequently cannot be taken farther than the words. But by the court, This is not an explanatory act, but a new law, and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable, than either that are there mentioned; and the parliament never intended to put a certificate man in a worse condition than another person. Cas. of S. 121.

H. 16 G. 2. K. and Stansfield. If an estate descends to a certificate person, it gains him a settlement, because it is by operation of law, and not by an act of his own; and as the statute hath been laid open in cases of descents, it ought to be so in cases of purchases. And by Lee Ch. J. the statute of the 8 & 9 W. hath received a liberal construction; and hath been held to gain a fettlement, both in descents, and devises, and purchases. the 13 & 14 C. 2. the construction has been, that let the value be what it will, a person cannot be removed from his own; and it seems to be the same upon the certificate act, for if he is not removeable within the 13 & 14 C. z. he is not removable on the certificate act. Seff. C. V. 1. 316.

7. 16 G. 2. Deddington and Dunfrew. A certificate man purchased a house for 421. lived in it many years, then sold it, and becoming chargeable was fent back. It was infifted, that the

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9 & 10 W. c. 11. faying, a certificate man shall gain a settle ment by no act what soever, unless the taking 101. a year, or ferving an annual office, this man, notwithstanding the purchase, might be fent back: and it was faid to differ from the case of Burclear and Eastwoodbay, where the surrender of a copyhold to the certificate man's wife was held to gain him a fettlement; because there it was not his own act (as this purchase is) but it came to him by operation of law. But the court did not think this a fufficient diffinction, and faid a purchase was in its nature an excepted case; and his selling it afterwards made no alteration.

H. 6 G. Ivingboe and Stonebridge. A certificate man made a purchase in Stonebridge, and his apprentice lived with him for above 40 days upon the purchased estate there: And by the court, the apprentice thereby gained a fettlement; for when a certificate man maketh a purchase, he immediately ceaseth to be there in nature of a certificate man, and becomes a fettled inhabitant, and confe-

quently his apprentice with him. Str. 266.

Upon this last occasion of mentioning certificates, it is obvious to observe from all that hath been said thereupon, that there are divers good reasons for requiring certificates with persons coming to fettle in any place; namely, that persons residing under them can gain no fettlement, neither by apprenticeship, nor by service, nor by giving notice, nor by paying parish rates; that they can fettle neither apprentices nor fervants; that if they become chargeable, it is certainly known whither to remove them, and the parish shall be paid for the removal, and for their maintenance in the mean time; and that if they fall fick, and cannot be removed, the parish which gave the certificate must maintain them: none of all which can be without a certificate. Which reasons will hold proportionably for parishes not granting certificates in ordinary cases; for it is far more than an equal chance, but that they will have them again, and in a worse condition.

3. How far residence upon a man's own estate is necessary, to

gain him a settlement.

(1) H. 8 W. Rifelip and Harrow. By Holt Ch. J. Having land in a parish will not make a settlement, but living in a parish where one has land, will gain a fettlement without notice; for the act never meant to banish men from the enjoyment of their

2 Salk. 524.

M. 8 G. Wokey and Hinton Blewet. A person settled at Hinton Blewet, had an estate descended to him in Wokey; whereupon the justices fend him thither as to the place of his last settlement. But by the court, The order must be quashed; for it is no settlement nor inhabitation, though if he should go thither he could not be removed: it may be a great injury to fend him away from a good trade at Hinton Blewet, to perhaps half an acre of land, wherein he has but a term. Str. 476.

The husband ran E. 8 G. 2. K. and St. Mary Berkhamstead. away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her in Northchurch, and she and her children went to live there. The question was,

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Whether by continuing therein 40 days, they gained a fettlement. The court feemed to be of opinion, fince it was not known that the husband was dead, he must be supposed to be alive, and in that case that the wife could not gain a settlement for her self, but must follow the husband's settlement; and that the husband having not refided 40 days at Northchurch, in the faid house unremovable, he hath gained no fettlement there. Seff. C. V. 2. 182.

(2) M. 12 G. 2. Souton and Sidbury. A person who lived Residence on with his family at Souton, having an estate at Sidbury which the the same estate, tenant gave up, went thither, and lodged in an alehouse as a not necessary, guelt, without having any certain room there, and staid from November till April, but sometimes went to Souton where his children and family were, and to other places as his occasions required, possessed and managed his estate, by repairing fences, hoeing turnips, and the like. The question was, Whether such inhabiting, and not upon the estate, would gain a settlement? And the court were of opinion it would, and that it made no difference whither it were in his own house or in an alehouse; for being in the same parish, he could not be removed. Seff. C. V. 2. 150.

(3) Another question was moved in the same case, Whether Residence for 40 fince he did not refide there for 40 days together, but for more days together net than 40 days in the whole, fuch residence shall gain a settlement? necessary. And by the whole court; It is not necessary upon the statute, that

And. 345.

And, T. 13 G. 2. St. Neot's and St. Clere. A person at St. Neot's was hired and ferved a year; and then he returned to St. Clere, where he had a joint freehold with his mother, and lived there backwards and forwards, but not 40 days at a time, but more in the whole, and afterwards fold the same. The question was, Whether here was any fettlement at St. Clere? By the court; This depends on the statute of the 13 & 14 C. 2. and 40 days inhabitancy together is not requifite, and the man was well settled at St. Clere, for there was a time, when by residence of 40 days he could not be removed from thence. Seff. C. V. 1. 313. Str. 1116.

the residence should be for 40 days successively. Seff. C. V. 2. 150.

AND now upon the whole, having gone thro' this subject of Conclusion, fettlements, and I hope with some perspicuity and exactness; the first reslection which will arise in the mind of every reader, I think, will be, to admire the subtilty of human wit: It was the observation of a wife king of Israel long ago, that god made man upright, but they have fought out many inventions. A stranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the construction of one short act of parliament, and one single clause of that one fhort act, and which upon the face of it doth not appear to carry any confiderable difficulty.

The next thing that occurs, is to reverence the wisdom of the court of king's bench, in clearing up those difficulties, and establishing the sense of the law upon folid and firm grounds.

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Nevertheless it is obvious to remark one defect of the law. which runs thro' this whole course of settlements, and that is, with regard to the settlement of Scotchmen and Irishmen in Eng. land; although the case before mentioned of St. John's Wapping and St. Botolph's Bishopsgate, H. 28 G. 2. seemeth at last to have fettled the matter with regard to their wives being English women, and their children born in England: If it shall be determined that they may gain settlements in England as Englishmen may do, then it feemeth but equal, that when likely to become chargeable, they may be removed to Scotland or Ireland, as other inhabitants to their lawful place of fettlement, although they should not become vagrants, and of consequence actually chargeable. Or if not so; then, as they can bring no legal certificates from Scotland or Ireland, it feemeth but equal that they should be put upon the same footing with Englishmen having certificates, and consequently not in a condition to gain fettlements otherwise than as certificate men may do.

But excepting in this one instance, and some very sew others which have been mentioned, and which one short act of parliament would rectify, the law seems now to be well settled as to these matters; and consequently the disputes about settlements cannot so much arise from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, must always be uncertain, as depending upon the testimony of witnesses, and those also for the most part of the

meanest of the people.

There hath been also another cause of much altercation, upon appeals against orders of removal, which arises from some defect in those orders themselves, or from some error in the method of proceeding in relation thereto: which comes next to be considered.

#### III. Of removals.

i. Order of removal in general.

ii. Order of removal of a certificate person.

iii. Appeal against the order of removal.

#### i. Order of removal in general.

The statute of the 13 & 14 C. 2. c. 12. which hath been so often canvassed in treating concerning settlements, is not yet to be dismissed by us, but will appear again under this head, in a new and a quite different light; as being that upon which all the orders of removal are or ought to be established. And in this view, there have been as many cases adjudged upon it, as in the other, altho' not altogether in so great a variety.

In treating of this subject, we will first set forth the statutes:

Then the established form of an order of removal thereupon:

And then take the same in pieces orderly and distinctly, thereby

to discover the several shelves and rocks upon which numberless orders have been shipwrecked.

It is true, the statute of the 5 G. 2. whereby errors in point of form may be amended at the sessions, hath in some fort remedied these defects; but that it may appear how such errors are to be amended, and as it will be better if the order be such as shall need no amendment, and as it still remains a doubt upon that statute, what shall be deemed matter of form, and what shall be deemed of, the substance of the order, this method is not the less to be

purfued upon that account.

By the 13 & 14 C. 2. c. 12. it is enacted as follows: Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to fettle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overfeers of any parish, to any justice of the peace, within 40 days after any such person coming so to settle in any tenement under the yearly value of 10 l. for any two justices of the peace (one whereof is of the quorum) of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. f. 1.

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may find him to the house of correction, there to be punished as a wagabond. S. a. And by the 17 G. 2. c. 5. All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month. S. 1.

And if the churchwardens and overfeers of the parish to which be shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall hind any such officer in whom there shall be default to the assizes or sessions, there to be indicted for his contempt in that

behalf. 13 & 14 C. 2. c. 12. f. 3.

And by the 3 W. c. 11. If the churchwardens or overseers of the parish or town to which the person shall be so removed, shall resust or neglect to receive the said person, he or they so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) foreseit for each offence 5 l. to the use of the poor of the parish or town from which such

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person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. S. 10.

Upon complaint made by the churchwardens or overfeers of any parish to any justice of the peace.] By these words one justice alone hath cognizance of the matter, so far as concernent the complaint only; and by virtue thereof may iffue his warrant to bring the party before him in order to his examination; or he may iffue his warrant, to bring the party before himself and another justice, in order to hearing and determining the complaint; for he himself alone cannot hear and determine, but only bring the matter into the course of being heard and determined by two justices: and therefore it is most usual for the two justices originally to issue their joint precept to bring the party before them for that purpose. Nevertheless, if the party is willing, he may go voluntarily before the justices, at the request of the overseers, without any warrant at all.

The form of which warrants or precepts aforesaid, where they are requisite, may be to this effect:

Warrant of one justice for a person to be examined concerning his settlement.

Westmorland. { To the constable of \_\_\_\_\_.

FORASMUCH as complaint bath been made before me one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of — in the county aforesaid, that A.P. bath come to inhabit in the said parish, not baving gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said A.P. is likely to become chargeable to the said parish of —. These are therefore to require you to bring the said A.P. before me, to be examined concerning the place of his last legal settlement. Herein sail you not. Given under my band and seal the — day of —

Warrant of two justices in order to the adjudication.

Westmorland. { To-

TORASMUCH as complaint hath been made before us two of his majefty's justices of the peace in and for the said county, and one of us of the quorum, by the churchwardens and overseers of the poor of the parish of in the said county, that A.P. bath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him

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to be fettled elsewhere, and that he the said A.P. is likely to become chargeable to the said parish of \_\_\_\_\_. These are therefore to require you to bring the said A.P. before us, at the house of \_\_\_\_\_ in the said county, on \_\_\_\_ the \_\_\_ day of \_\_\_\_ at the bour of \_\_\_\_ in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt withal according to law. Given under our hands and seals the \_\_\_\_ day of \_\_\_\_.

It may also not be unfitting, especially in cases of doubt or difficulty, to give notice (if it may be) to the overseers of the parish or place where the settlement is supposed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from such adjudications and orders: Which notice may be to the effect following.

Summons to fhew cause against an order of removal.

Westmorland. O the churchwardens and overseers of the poor of the parish of \_\_\_\_\_ in the county of \_\_\_\_\_, and to every of them.

This is to summon you, or some of you, to appear (if you shall so think proper) before \_\_\_\_\_, and such other his majesty's justices of the peace for the said county of W. as shall be at the house of \_\_\_\_\_ in \_\_\_ in the said county of W. on \_\_\_\_\_ the \_\_\_\_ day of \_\_\_\_ at the hour of \_\_\_\_ in the afternoon of the same day, to show cause why A. P. should not be removed from the parish of \_\_\_\_\_ in the said county of W. to your said parish of \_\_\_\_\_ in the year of our lord \_\_\_\_\_ this \_\_\_\_\_ in the year of our lord \_\_\_\_\_.

And then the general form of an order of removal, as grounded upon the statute of the 13 & 14 C. 2. above recited, may be thus:

The form of a general order of removal.

Westmorland. To the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and owerfeers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, nor produced any certificate owning them or any of them to be settled elsewhere.

effewbere, and that the faid John Thomson, Mary his wife, and Thomas and Agnes their children are likely to be chargeable to the faid parish of Orton; We the said justices, upon due proof made thereof, as well upon the examination of the faid John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premisses, Do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the faid John Thomson, Mary bis wife, and Thomas and Agnes their children, is in the Said parish of Penrith in the Said county of Cumberland: We do therefore require you the faid churchwardens and overfeers of the poor of the faid parish of Orton, or some, or one of you, to convey the faid John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your faid parish of Orton, to the said parish of Penrith, and them to deliver to the church. wardens and overfeers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; And we do also hereby require you the faid churchwardens and overfeers of the poor of the Said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the day of in the -- year of the reign of his faid majefty king George the second.

To the churchwardens and overfeers of the poor of the parish of Orton] If a place is extraparochial, and hath no overfeers, the justices cannot remove from thence, because there are none neither to complain nor to convey; but the justices ought first to appoint overfeers, and then to remove. 2 Salk. 487. Foley 97, 98.

Of the parish of Orton in the said county of Westmorland] The county in the margin is not sufficient, but it must appear in the body of the order that the place is in such county, either expressly, or by some words of reference, as in the said county, or in the county aforesaid. Case of S. 151. Sess. C. V. 2. 181.

And to the churchwardens and overseers of the poor of the parish of Pemrith in the county of Cumberland] As the justices cannot send from an extraparochial place, unless they have overseers, so heither can they send to an extraparochial place, which hath no overseers, because there are none to receive them. 2 Salk. 487. Foley 97, 98.

E. 1 An. St. George's and St. Olave's. The order was to convey one Thomas Gill to the parish of St. Olave, and it was directed, To the churchwardens and overseers of the poor of the parish of St. Olave. Quashed: for they ought and can only order the parish officers where the intrusion is made, to make the removal.

2 Salk. 493.

Upon the complaint H. 12 G. 2. K. and Hareby. It was moved to quash an order of removal, because it did not set forth any complaint made: And by the court, the objection is fatal, for the complaint is the foundation of the justices jurisdiction. Andr. 361.

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Upon the complaint of the churchwardens and overseers of the poor E. I An. Weston Rivers and St. Peter's. Exception to an order of removal, in that it was said to be upon complaint only, and not of the churchwardens or overseers. By the court; This exception is satal; for no one can disturb a man coming into a parish, but they that have authority to do it: A complaint from one not concerned is nothing; it may be the parish is willing to keep him. 2 Salk. 492.

Upon the complaint of the churchwardens and oversiers of the poor of the parish of Orton asoresaid M. 9 An. Spalding and St. John Baptist. The order was, To the churchwardens and overseers of the poor of the parish of Spalding; and to the churchwardens and overseers of the poor of the parish of St. John Baptist: Whereas complaint hath been made by you——It was moved to quash the same for the uncertainty, because it did not say by which: But by Parker Ch. J. Sure that is well enough, for it is upon complaint of the right, if both complain. Foley 267.

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace. An order was quashed, because it did not appear that it was made by two justices: It was only, Whereas complaint hath been made unto us; without reciting their authority as justices. 5 Mod. 322.

Two of his majesty's justices of the peace M. 4 G. K. and Westwoodhay. On complaint to one justice, two justices adjudge and remove; and it was held to be well: Otherwise, where one justice sets his hand to the order in the absence of the other. Case of S. 107. Str. 73.

T. 11 G. 2. K. and Wykes. It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal. Str. 1092.

Justices of the peace in and for the said county] M. 12 An. 2. and Uplin. The order was quashed, because it did not say that they were justices of the peace, but only justices of the county. Coses of S. 27.

In and for the said county M. 13 G. K. and Owlton. Exception was taken to an order, for saying —— unto us two of his majesty's justices of the peace in the county aforesaid; for that by this it appears only that they lived in the county, and not that they were justices for that county: And the court held this to be a fatal exception, and quashed the order for that cause. Seff. C. V. 2. 76. 2 Saik. 474.

The said county M. 8 W. It was objected to an order, that it did not appear thereby that the justices were of the division, which is required by the statute: But this objection was overruled, for that the statute therein is only directory. 2 Salk. 473.

And one of us of the quorum] Abundance of orders formerly have been quashed, for not setting forth, that one of the justices

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was of the quorum; but now by the 26 G. 2. c. 27. no order

shall be set aside for that defect only.

But if in fact neither of the justices shall be of the quorum, it feemeth nevertheless that such order shall not be good; for altho' the statute doth not require that the order shall fet forth one of the justices to be of the quorum, yet it doth require that one of them shall actually be so. And there are many towns corporate whose charters have no quorum, but only do constitute certain of the chief officers justices to keep the peace, without giving them power to hear and determine felonies, trespasses, and other mifdemeanors: That is to fay, they have the power which the justices of the county at large have by the first assignment in the commission of the peace, which is the same that the conservators of the peace had by the common law, and is all that the justices of the peace had at first by their commission. The power of hearing and determining, which they have now by the fecond affignment in the commission, and which only implies a quorum, is a separate and disfinct authority, and was superadded to the former some years after the inflitution of the office of justices of the peace; and this power the justices in divers towns corporate have not, and consequently can have no quorum.

E. 6 G. Albright and Skipton. Upon appeal from an order of removal made by two justices (one of the quorum); the sessions, reciting that they had perused the charter of Albright, and it not appearing thereby that the two justices were either of them of the quorum, therefore they quashed the order of removal. But by the court, The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alledged; since they might have a jurisdiction, though it did not appear upon the charter of Albright. The sessions should have said in general, that it appeared to them, that the two justices were neither of them of the quorum, and that would have been good cause to quash the order

of the two justices. Str. 300.

That John Thomson] M. 11 An. Southwell and Needwell. Whereas a certain woman hath intruded, These are therefore to require you to convey: Objection, It is not said who this woman was. And by Parker Ch. J. You must either name her, or say a certain woman unknown. Cas. of S. 57.

T. 10 An. Case of Newington. Whereas such a person hath intruded into the parish, and is likely to become chargeable; These are therefore to require you to remove him with three children. Quashed as to the children, for they have removed more

than is complained of. Caf. of S. 45.

Mary bis wife, Thomas their son H. 10 W. Johnson's case. Order to remove a man and bis family, not good; because too general: for some of the family might not be removable. 2 Salk. 485.

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M. 5 G. Beaton and Sisson. Order for removal of Thomas Block and his family: Upon the first reading, quashed as to the fa-

mily, because too general. Str. 114.

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T. 9 W. Flixton and Rosson. Order to remove Jane Smith and her five children; Quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children: for she might have more children than five, and some of those five might have gained settlements. Seff. C. V. 1. 11. Foley 278.

I. 8 G. Hobey and Kingsbury. Two justices adjudging the settlement of the husband to be at Kingsbury, and that he is likely to become chargeable to Hobey, send him, his wife, and son of one year old, to Kingsbury; And whether this was good as to the wife and child, was the question: And it was held to be well enough;

and the order was confirmed. Str. 527.

Thomas their son aged 8 years, and Agnes their daughter aged 4 years] M. 9 An. 2. and Middleham. Order to remove a child, of the age of ten years, to Middleham, because Middleham was the place where his father was last legally settled. Quashed by the court; for that there was no adjudication that Middleham was the place of the child's last legal settlement, and at that age it might have gained a settlement. Foley 271.

I. 10 An. Ringmore and Petworth. The order was, Whereas such a person and his 3 children are likely to become chargeable, and their last legal settlement was at Ringmore. It was moved to quash the same, because the childrens ages were not set forth. But by the court; It is not necessary in this case; for the order says, they were last legally settled in Ringmore, and then no matter

what their ages are. Caf. of S. 41.

H. 11 G. K. and Trinity. This rule was laid down; Every order that concerns the removal of a father and his children, ought to shew the ages of the children, for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right; but if it appears upon the order that the child was above 7 years old, the order muit set forth, that such child hath not gained a settlement in his own right. Sess. V. 2. 74.

Have come to inhabit] E. 12 An. 2. and Graffham. The order sets forth, that Henry Tate and his wife do endeavour to intrude into the parish. And quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it. Cas. of S. 16.

Not having gained a legal settlement there E. I An. Wotton Rivers and St. Peter's. Exception to an order of removal, that it was not said, that the poor person did not rent a tenement of 10 l. a year, according to the words of the act. As to which, Holt Ch. J. said, that before the 13 & 14 C. 2. two justices did remove by consequence of law, upon the 43 El. because that statute makes provision,

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provision, that every parish shall maintain its own poor; therefore the justices considered who were properly the poor of a parish, and they were held to be fuch as were there fettled a convenient time, which was thought a month, so that a month's abode made an inhabitant. But there being feveral doubts made about this matter, therefore to fettle the fame, the statute of the 13 & 14 C. 2. was made; upon which flatute this question now arises, viz. Since the power to remove a poor person being not wholly found. ed on the statute of the 13 & 14 C. 2. but on the law as it was before the making of that statute, whether such an order as would ferve for a removal before that statute, would ferve fince, or whether the statute obliges the justices to alter the form of their orders; and this depends upon the operation of the statute, whether it was by way of jurisdiction or restriction; and upon searching of precedents by the secondary he found, that the orders before this sta. tute were all without this clause, and so were the orders fince; whereupon, as to this point, the order was held good: And if the fact is, that the person removed doth rent a tenement of 101. a year, it ought to be remedied by way of appeal. 3 Salk. 254.

Nor produced any certificate owning them or any of them to be fettled elsewhere] For by the 8 & 9 W. c. 30. If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order fet forth that they are actually become chargeable, then this clause therein, concerning the certificate, is superfluous.

Likely to become chargeable] Scrivenbam and St. Nicholas. Order, not faying that the party was likely to become chargeable: Quashed. 3 Salk. 255.

H. 4 G. Teelby and Willerton. Order, Whereas complaint hath been made, that Anne Stamp may become chargeable,—We adjudge the same to be true. Quashed; for that the act enables the justices only to remove persons likely to become chargeable, and not persons that possibly may be chargeable, for no one can say who may not be chargeable; and there is as much difference in this case between may and likely, as between a possibility and a probability. Sefs. C. V. 1. 117. Str. 77.

T. 10 An. Order, Whereas such a person will become chargeable, if permitted to abide. Objected, this is uncertain; it may be ten years hence; Quashed. Cases of S. 39.

Note; It doth not appear from any adjudged case, that upon appeal it was ever controverted, whether the person was or was not likely to become chargeable. And in the case of South Sydenbam and Lamerton, T. 3 G. Mr. J. Eyre said, that by the words of the act, living on a tenement under 10 l. a year, and likely to become chargeable, are convertible terms. Seff. C. V. 1.

Nevertheless, complaint must first be made, that the party is likely to become chargeable, before the justices can remove. And, in the case of K. and Wykes, T. 11 G. 2. an information was granted against a justice, for taking the examination of a person

in order for his removal, upon the officers complaining, that he endeavoured to gain a fettlement in the parish contrary to law; without complaining at the same time, that he was likely to become chargeable. Andr. 238.

To the said parish of Orton ] T. 10 An. Q. and Bradford-Likely to become chargeable, but not faid to what parish: Quash-

ed. Cases of S. 40.

But in the case of K. and Witham Super montem; H. 5 G. By the court: It appearing to us that he is likely to became chargeable. is fufficient, without faying to the parish from whence removed; for it is not to give a jurisdiction, but only the reason of the judgment. Str. 142.

And, M. 7 G. Maidstone and Detbing. It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of Dething, and is likely to become chargeable, without faying farther, to the faid parish of Dething.

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And, E. 12 G. K. and Leofield. An order of removal, whereby a person was adjudged likely to become chargeable, without saying, to the parish from whence removed, was confirmed.

Upon due proof made thereof, as well upon the examination &c.] H. 13 G. 2. K. and Fisherton Dallemer. Opon due consideration was held to be fufficient; for that due confideration implies a due examination. Seff. C. V. 2. 45.

Examination T. 12 W. Ware and Stanfead Mount Fitchet. Exception to an order, for that it was faid, it appears upon examination before us or one of us. By the court; The examination ought to be before both, because both are to make the judgment of removal. And Gould J. faid, the statute directed, and the practice was, to make complaint to one justice, and he grants his warrant to bring the poor man before two justices, and then they two examine and remove. 2 Salk. 488.

Examination of the faid John Thomson] T. 11 & 12 G. 2. K. and Wykes. A person ought to have notice, and be heard before he be removed: for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer: and therefore natural justice requires, that he be not condemned unheard. Andr. 238.

Of the said John Thomson upon oath In the case of K. and Wykes last abovementioned, one justice took the examination, and other two justices removed upon that sole examination, and in the order did set forth that the party was examined before themselves; for which, and for not summoning the party before them, an information was granted against the two justices. Andr. 238.

Upon oath H. 10 G. Munger-hunger and Warden. Exception to an order, for that it is said to be made upon due examination, Without faying upon oath: By the court, This is sufficient; for

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where it is faid to be made upon due examination, it shall be in: tended to be upon oath. Seff. C. V. 2. 40.

Do adjudge the same to be true ] T. 13 W. Suddescomb and Bur. was. Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices. 2 Salk. 40!

H. 4 G. K. and Westwood. Order quashed, because the justices only fay, We order him to be removed to fuch a place, as the place of bis last legal settlement, without adjudging that to be the place,

T. 3 & 4 G. z. K. and Minchin-Hampton. Order, Whereas complaint is made to us, that such a person is now become charge. able, we do adjudge that the last place of his lawful fettlement is in the parish of Minchin-Hampton. Objected, that here is no adjudication that he is likely to become chargeable; and quashed for this reason. Seff. C V. 2. 93.

T. 4. G. Stallingburgh and Haxhay. On examination we do believe the same to be true. Quashed; for a man may believe a

thing on uncertain evidence. Seff. C. V. 1. 131. E. 10 An. Waltham Magn. and Parva. Whereas such a perfon is likely to become chargeaute, as we are credibly informed, these are therefore to require you to remove: Quashed, for that here is no adjudication that he is likely to become chargeable; and this is only the belief of another. Cases of S. 38.

And we do likewise adjudge that the lawful settlement] E. 9 W. Bury and Arundel. Whereas complaint hath been made unto us, that Jacob Duckin with his wife and children, came from his place of abode and last legal settlement in Bury to Arundel, We therefore require you to remove: Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that Bury was, which doth not appear whether true or false. 2 Salk. 479.

T. 12 An. Eglium and Hartley-Wintly. An order adjudges that a man was fettled at fuch a place; and therefore they remove his widow thither: Quashed; for that here was no adjudication of the widow's fettlement, and she might have gained a fettlement after the death of her husband. Seff. C. V. 1. 45.

T. 3 & 4 G. 2. K. and Warnbill. Adjudication that the last legal place of the pauper is at Warnbill in the county of Berks. Quashed; for that this is no adjudication of the settlement. Seff. C.

M. 3 An. It was held, that legal settlement and last legal settlement are the same thing; because by every new settlement the

precedent is discharged. 2 Salk. 473.

M. 12 An. St. Mary Ottery and St. Mary's. The justices in their order fay, that the poor person was last fettled there according to their knowledge: By the court; They should have said, he was last settled there; an order is a judgment, and must be certain and positive: he might have been settled elsewhere, and they not know it. Quashed, Cases of S. 32.

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And provide for them] The statute directs, that the place whither they are sent shall receive and provide for them; for which reason the same is inserted here in the order: but it seemeth that when the removal is into another county, those words are unnecessary, because inessectual; for that the justices in one county cannot take order for the relief of poor persons in another county.

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It may be proper here to subjoin one remarkable case of a removal, wherein there was no adjudication of the last settlement, and where the place removed to was not the place of the last settlement, and yet the order as to that was held to be good. K. and Banbury. A constable without a warrant brought a child from Broughton to Banbury; and two justices of Banbury made an order reciting the sact, to return the child to Broughton, there to be provided for according to law. The court held the order good, for returning the child to the wrong doers; and therefore that part of the order was affirmed; but it ought not to be said, to be there provided for; but they are to be left to take their course according to law; therefore that part was quashed. Comb. 372. But it is plain that this removal was not in pursuance of the statute of C. 2. but seems rather to have been by the constructive power of removing which the justices had upon the statute of the 43 El.

So much concerning the usual form of an order of removal: And after such order and adjudication is made, that the same may appear upon record afterwards, in order to charge the parish, it was faid by Holt Ch. J. (1 Salk. 406.) that the most regular way for the justices to proceed, is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overfeers, to convey the persons to the parish to which they ought to be fent, and deliver in the record by their own hands into court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal was made in pursuance of such order: otherwise, how shall the parish be charged by an order which possibly they knew nothing of, and consequently could have no opportunity to appeal against. It is usual in some places, for the overfeers who made the removal, to bring the original order to the next fessions, and there make oath, that they removed the party in pursuance of such order, and then if there appear to be no appeal against it, the order is confirmed by the court, and filed amongst the records And altho' fuch confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as fuch order is a record of it felf, and contains in it the adjudication of the justices, it seemeth that the court may record thereupon likewise, that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it feemeth, that unless it be upon appeal, they have no power to inquire concerning the removal, for that VOL. II.

as to them is extrajudicial: But the justices, who made the order, have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded.

#### ii. Order of removal of a certificate person.

As it will appear from what hath been faid under the former head, concerning the removal of poor persons having no certifi. cate, that in most of the books there are many bad orders; so it will appear also from thence, and from what will be faid under this head, concerning the removal of certificate persons, that as to this kind of removal there is scarce one good order (which is a · little furprifing in a matter of daily practice), yea scarce one which is capable of being amended even by the statute of the 5 G. 2. for there are objections which go to the very essence and substance of the order, especially the want of proper adjudications, either that the party is become chargeable, or of the place of his last legal fettlement (for he may have gained one after the certificate), or both: for a judgment without adjudging, is a contradiction; and where there is no judgment, there is in strictness nothing to appeal against, but only an order that the parish shall receive and provide for a person, who for ought appears doth not belong to

By the 8 & 9 W. c. 30. If any person who shall come into any parish or place, there to reside, shall deliver a certificate to one of the churchwardens or overseers there, such certificate shall oblige the parish or place granting the same, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and then, and not before, it shall be lawful for any such person, and his children, tho born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought. 1.1.

And by the 3 G. 2. C. 29. When any overfeer or other person shall remove back any persons or their families, residing under a certificate, and becoming chargeable, to the parish or place to which they shall belong; such overseer or other person shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such persons, by the churchwardens or overseers of the place to which such persons are removed; the said charges being sirst ascertained and allowed of by one or more justices for the county or place to which such removal shall be made; which said charges, so ascertained and allowed, shall, in case of resusal of payment, be levied by distribund sale of the goods of the churchwardens and overseers of the place to which such certificate person is removed, by warrant of such institute or justices. 1.9.

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Form of an order of removal of a certificate person.

Westmorland To the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland.

WHEREAS complaint bath been made by the churchwardens and ov refers of the poor of the parish of Orton aforesaid in the faid county of Westmorland, unto us whose names are bereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their for aged 8 years, and Agnes their daughter aged 4 years, having for some time last past dwelt in the parish of Orton aforesaid, being allowed fo to do by reason of a certificate bearing date the day of \_\_\_\_ in the year of our lord \_\_\_ under the hands and said of A. C. and B. C. churchwardens, and A. O. and B. O. overseers of the poor of the said parish of Penrith, attested by A. W. and B. W. two credible witnesses, and allowed by J. P. and K P. esquires, two of his majesty's justices of the peace for the said county of Cumberland, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of Orton; And whereas it appears to us, as well upon the oath of the said John Thomson as otherwise, that neither they the faid John Thomson, Mary his wife, Thomas and Agnes their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premisses, it appears to us, and we do hereby adjudge, that the said John Thomson, Mary bis wife, and Thomas and Agnes their children, are become chargeable to the said parish of Orton, and that the place of the last legal settlement of them and every of them is in the said parish of Penrith in the said county of Cumberland: These are therefore to require you the faid churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the faid John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof at the same time shewing to them the original; And we do also hereby require you the said churchwardens and overseers of the toor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the in the year of our lord-

Allowed by J. P. and K. P. esquires, two of bis majesty's justices of the peace H. 9 An. K. and Newton. Order for removing a certificate person, not setting forth that it was allowed by two justices, but adjudging the parish which granted the certificate to be the place of the last legal settlement. By Mr. J. Probyn; The

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order is good, for it fets out that the pauper came by certificate, and adjudges that he was actually chargeable, and that Newton was the place of his last legal settlement, he having gained no fettlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good, if there had been

no certificate. Seff. C. V. 1. 149.

M. 7 G. Barleycroft and Cole-overton. Order of removal of a certificate person; It was not said that the certificate was attested, but only that it was allowed. But by the court, The attestation is by the statute made previous to the allowance, and therefore when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed. And the order was confirmed. Str. 402.

Are become chargeable] E. 9 An. Q. and Brumstead. An order of two justices for the removal of a man that came into a parish by certificate, was quashed upon this exception; It was said in the order, that they removed him, because he was likely to become chargeable: And the whole court were of opinion, that the justices cannot remove a person that comes into a parish by certificate, till he is actually chargeable to the parish. 2 Salk. 530.

H. 4 G. Teelby and Willerton. The justices remove a certificate woman, being likely to become chargeable. But by the court; She is by the statute not removable, till she actually becomes chargeable. And the order was quashed. Str. 77.

And we do hereby adjudge] T. 2 An. Maldon and Fleetwick. An order was made, reciting, that whereas complaint hath been made unto us, that such a person, who is lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove: And quashed, for that

there was no adjudication. 2 Salk. 530.

T. 15 G. 2. K. and Great Bedwin. Order of removal of a certificate person, in which there was no complaint of the churchwardens or overfeers, nor any adjudication that the certificate perfon is actually become chargeable. On appeal, the fessions in pursuance of the 5 G. 2. amend the order in these particulars, as matter of form only, and infert in the faid order such complaint And now the question was, whether these and adjudication. amendments went only to matter of form, or to the substance and By Lee Ch. J. There has been but one cale merits of the order. in this court on this act fince the making of it, and that was not determined: The present seems to be a very strong case against the power of amending. For there must be a complaint from the overfeers, otherwise the justices have no power to remove; and a certificate person must be adjudged to be actually chargeable, otherwife he cannot be removed: And these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act, to take it so largely; and would be giving the sessions an original jurisdiction. And quashed by the whole court. Seff. C. V. 2. 142. Str. 1158.

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But after all, it doth not appear, how it becomes necessary in the order of removal, to take any notice of the certificate at all, or to make any further use of it than as evidence to the justices of the settlement: And if it is not necessary to recite it, it is better to omit the same; because a misrecital, either in the date, or in the names of the persons, or in any other material part, will be fatal, for that then there will be no such certificate as is there recited, and the order must fall of course. And I do not see, why the form may not be much more plain and fimple, by drawing the same very little varied from the common form of an order of removal of other persons having no certificate. It is true, where the persons are only likely to be chargeable, it is then requisite to fet forth in the order that they have no certificate; for if they have one, they cannot be removed till they actually be charge-But if the order do fet forth that they are chargeable, in that case it is not at all material whether they have a certificate or not; for in both cases alike, they are then equally removeable. And if so, then the form may be this, both for a certificate person, and for a person having no certificate, who is actually become chargeable :

Westmorland. To the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overfeers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us aubose names are bereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary bis wife, Thomas their fon aged 8 years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, and that the faid John Thomson, Mary his wife, and Thomas and Agnes their children are now chargeable to the said parish of Orton; We the Said justices, upon due proof made thereof, as well upon the examination of the faid John Thomson upon oath, as otherwife, and likewife upon due consideration had of the premisses, do adjudge the same to be true; and we do likewise adjudge, that the lawful fettlement of them the faid John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Pen-11th in the faid county of Cumberland: We do therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some, or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, er a true copy thereof at the Jame time sheaving to them the original; And we do also hereby require you the said churchwardens and over-

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feers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of his said majesty king George the second.

#### iii. Appeal against the order of removal.

Power of appealing. 1. All persons who think themselves aggrieved by any such judy ment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who shall do them justice according to the merits of their cause. 13 & 14 C. 2. C. 12. s. 2.

And by the 8 & 9 W. c. 30. The appeal against any order of removal of any poor person, shall be had, prosecuted, and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere. 1.6.

All persons who think themselves aggrieved E. 4 W. K. and Hartsield. Two justices removed Nicholas Wells, from the parish of Hartsield, to the parish of Framsfield; from which order, Wells the party himself, and not the parish, appealed: It was objected, that the party himself cannot appeal, because the appeal is given only to the parish aggrieved: But by the whole court, the party may appeal as well as the parish. Carth. 222.

T. 4 G. K. and Almonbury. An order of two justices is quashed at the sessions upon appeal, without saying, at the appeal of the party grieved. And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason and that only, as Pratt Ch. J. de-

clared, the order was confirmed. Str. 96.

At the next general or quarter fessions ] E. 2 G. 2. K. and Norton. Exception was taken to an order of fessions, for discharging an order of removal, because the justices order was dated June 21. and the sessions order was not till Michaelmas sessions following, so that Midsummer sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be the next sessions after the parties find themselves aggrieved, which is not till the removal; and for ought appears Michaelmas sessions might be the next sessions after the grievance. And so it was held in the case of Milbrook and St. John's in Southampton, M. 1 G. To which the court agreed, and the sessions order was affirmed. Str. 831.

T. II W. K. and Langley. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and so the determination upon the appeal was not at the next quarter sessions. But by the court; The appeal must be lodged at the next quarter sessions, but when it is lodged,

the justices may adjourn it. 2 Salk. 605. Comb. 365.

H. 20 G. 2. K. and Polstead. Appeal was made to the quarter sessions in Suffolk held April 7. 1746. against an order of removal. The sessions was adjourned to April 9. at Woodbridge.

where for want of a sufficient number of justices nothing could be done. April 11. a sessions is held at Ipswich, and adjourned to the 14th at Bury, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at Woodbridge. And of that opinion was the court; for the words in the 2 H. 5. c. 4. and more often if need be, were never considered as giving more than one original sessions in a quarter, but only impowering adjournments. The country must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed. Str. 1263.

T. 15 G. 2. Roode and North Bradley. A person was removed from Rosde to North Bradley. North Bradley gave notice of appeal; on which, Roode took him back, but however got their order confirmed at fessions. The next sessions set both aside as fraudulent. And now Roode infifted, that the order was good, as not being appealed from at the next quarter fessions: And as to the other, that it was not in the power of one fessions to fet aside the act of the other. All being now before the court, they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next fessions after fervice of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next fessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, which rescinded that confirmation, as not being properly before them. Str. 1168.

For the county, division, or riding, from whence the removal wes E. 13 W. Watford and Wendover. Two justices of St. Albans remove a poor person to Wendover. Wendover appeals to the sessions at St. Albans, where the order was confirmed. By the court; The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was coram non judice. 2 Salk. 490.

And in the case of Malden, M. 11 An. By Lord Parker, where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal ab codem ad condem, there being, it may be, the same justices sixting, who made

the order. Caf. of S. 10.

And by the statute of the 17 G. 2. c. 38. In all corporations of franchises, who have not four justices, persons aggrieved may appeal (if they think sit) against any orders of the justices, to the

next sessions of the county. S. 5.

2. No appeal from any order of removal shall be proceeded upon, Notice of appeal. unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing, unto the churchwardens or overseers of the parish or place, from which the removal shall be; the reasonable-ness of which notice shall be determined by the justices at the quarter

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seffions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next quarter sessions, and then and there finally determine the fame. 9 G. c. 7. f. 8.

Reasonable notice] It is not expressed in the act, that this no. tice shall be in writing; but the court will better judge of the reasonableness of it, if it shall be in writing: And it may be

O the churchwardens and overfeers of the poor of the parish of - in the county of -This is to give notice to you and every of you, that we the churchwardens and overfeers of the poor of the parish of -in the county of - do intend at the next quarter sessions of the peace to be bolden for the said county of - to commence and prosecute an appeal against an order of J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of - for and concerning the removal of - to our said parish of -Witness our hands this - day of -

> A. B. Churchwardens. E. F. Overfeers of the

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Order not ap- 3. H. 12 An. Malendine and Hunsdon. Two justices by an orpealed against, is der send some poor persons to Hunsdon. Two justices there by an order fend them back again. By the court; They ought to have appealed, and not fent them back; and held the order of the first two justices to be good, because there was no appeal against it. Fol. 273.

T. 12 W. Chalbury and Chipping Faringdon. A person was removed by order of two justices from a parish in Warwickshire, to Chalbury in Oxfordshire, from thence by order of two justices to Chipping Faringdon in Berkshire: It was objected, That Chalbury ought to have appealed, and got the order upon them discharged. Which Holt Ch. J. agreed: For fending the poor man to another place, is falfifying the first order, which cannot be done, but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed: Chalbury should have appealed from the Warwicksbire order, and got that set afide, and fent the man back thither; and the justices there should have sent him to Chipping Faringdon. Therefore the latter order was naught. 2 Salk. 488.

E. 5 G. 2. K. and Northfeatherton. Two justices made an order, by which they removed a man, his wife, and 4 children, naming them, to Featherton: and there was no appeal. Afterwards, Featherton finds out, that this woman was not the wife, for that the man, tho' married to her, was married before to another woman, and consequently the second marriage totally void. And they remove the woman by her maiden name to Horfington, and the four children thither also as bastards. Horsington appeals; and the fessions upon hearing the matter state the case specially, that this woman and the 4 children were the same with the woman and children removed by the first order, and gave judgment that the first order was conclusive, and thereupon quashed the said And by the court; They have flipped their opporfecond order. tunity, and the first order not appealed against is conclusive.

Seff. C. V. 1. 154. M. 16 G. 2. Nympsfield and Woodchefter. In 1731, a man and his wife were removed from Nympsfield to Woodchefter, and there was no appeal. They had afterwards returned to Nympffield, and had there three children, who were now fent from Nympsfield to Woodchester together with the father. And upon appeal as to the children, it was offered to give in evidence, that the man had a former wife, and confequently the children born at Nympefield were as bastards settled there The sessions refused to let Woodeh fler go into this evidence, being of opinion, that Woodthester was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: for the marriage being established by the first order, the settlement of the children (which is derivative) follows of courfe; and can no way be impeached, but by entring into the merits of the first order, which has been acquiesced in. And nothing is more established, than that an order unappealed from is conclusive. Str. 1172.

4. By the aforesaid statute of the 13 & 14 C. 2. it is expressed, Sessions to prothat the justices upon the appeal, shall do to the parties justice ac- ceed upon the

cording to the merits of their cause.

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And by the 5 G. 2. c. 19. On all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause defects of form to be rectified and amended, without any cost to the party, and after such amendment shull proceed to hear the

truth and merits of the cause. f. 2.

5. T. 8 & 9 G. 2. K. and the Juffices of W flmorland. Order Court equally of two justices of the borough, for removing a poor family. Ap. divided on the peal to the fessions of the county, at which only four justices were appeal. present, who were equally divided; so no determination was made, nor the appeal adjourned. A mandamus was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at fuch a fessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, the other two were divided in opinion. It was agreed on all hands that this return was very odd, and not to be supported. Sir Thomas Abney objected, that the writ of mandamus was bad, and ought to be quashed, for that it doth not appear, that the appeal was before them; and that, for ought appears, the mandamus requires the justices to do an impossible thing, viz. to proceed on an appeal not before them, fince the appeal being lodged at a former fessions, was not continued over to the subsequent sessions, and therefore was by law gone. Mr. Robinfon on the other fide faid, that it was not usual in such cases to return the continuances; but that if in fact there was no fuch conunuance, the fault was in the justices, who ought to have adjourned

journed the appeal, till by the coming of more justices, the matter might have been determined. By Hardwick Ch. J. the question is, whether there is a possibility of the justices proceeding in this appeal: He thought, if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions. He ordered the case to stand over, and recommended it to Sir Thomas Abney to advise his clients to proceed on the appeal, or return the continuances; and seemed at length inclined, if they did not comply, to grant a peremptory mandamus. Sest. C. V. 2. 193.

The justices may alter their order during the same sessions.

6. M. 3 An. St. Andrew's and St. Clement's Danes. The feffions made an order, on an appeal from an order of removal, and afterwards the same sessions vacated it by a subsequent order; and a certiorari being brought, both orders of sessions were returned thereon. By Holt Ch. J. The sessions is all as one day, and the justices may alter their judgment at any time, whilst it continues; but they should not have returned the vacated order, but only the latter; for the effect of the court's setting aside the first order is, that it ceases to be an order, and consequently ought not to be returned as an order vacated by another order, but it should have been annulled and made nothing. 2 Salk. 494, 606.

Costs on the appeal

7. And for the more effectual preventing of vexatious removals and frivolous appeals, the justices in solions upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of any parish or place (tho' they did not afterwards profecute such appeal), shall at the same sessions order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the faid justices in their discretion shall be thought most reasonable and just; to be paid by the churchwardens, overseers, or any other person, against whom Such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs, shall live out of the jurisdiction of the said court, any justice where such person shall inhabit, shall on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant cause the same to be levied by distress; and if no such distress can be had, shall commit such person to the common gool, there to remain by the space of 20 days. 8 & 9 W. c. 30. f. 3.

M. 5 G. 2. K. and the county of Nottingham. A mandamus was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and thereupon quashed the

writ of mandamus. Nelf. Poor.

Maintenance to be reimburfed.

8. For the preventing of vexatious removals, if the justices shall at their quarter sessions, upon an appeal before them there had concerning the settlement of any poor terson, determine in savour of the appellant, that such poor terson was unduly removed, they shall at the same quarter sessions, order and award to such oppellant, so much

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money, as shall appear to the said justices to have been reasonably paid by the parish or other place on whose behalf such appeal was made, towards the relief of such toor person, between the time of such undue removal, and the determination of such appeal; the said money so awarded, to be recovered in the same manner as costs and charges upon an appeal are to be recovered by the flatute of the 8 & 9 W. 9 G. c. 7. f. 9.

E. 3 G. 2. St. Mary's Nottingham and Kirklington. for a mandamus to the justices of the town and county of Nottingham, commanding them to allow the parish of Kirklington, the expence and charges their officers had been put to, in keeping a poor person from the time of his removal, till the order was discharged by the fessions upon appeal. And a mandamus was granted.

Seff. C. V. 2. 67.

o. M. 13 W. Mynton and Stony Stratford. By Holt Ch. J. Order confirmed that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties; for it is an adjudication that this is the place of

the party's last legal settlement. 2 Salk. 527

M. 10 W. Harrow and Rifelip. A person comes into Harrow, and being likely to become chargeable, was removed to Rifelip. Rifelip appealed; and upon the appeal he was adjudged to be fet-Afterwards Rifelip discovered, that Hendon was tled at Rifelip. the place of his last legal settlement, and sent him thither; and the question was, Whether after the adjudication upon the appeal, Rifelip was not estopped against all the world, to say, that Rifelip was not the place of his last legal settlement. By Holt Ch. J. Rifelip is estopped to fay otherwise; for if Rifelip had not been the very place of his last legal fettlement, the justices must have fent him back to Harrow, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to Rifelip. And now this is in effect the same queflion again, namely, whether he belongs to Rifelip? Which question has been already determined by the justices on the appeal, who have adjudged that he was last fettled at Rifelip. Now this point being determined, the appeal must be final and conclusive, otherwise there would be no end of things. 2 Salk. 524. 3 Salk. 261.

M. 6 G. Little Bitham and Somerby. A person is sent by order of two justices to Somerby, as the place of his last legal fettlement. Somerby appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, Somerby lends him to a third place. By the court, An order of reversal is final only between the two parithes; but if it be confirmed, it is final as to all the world: and therefore no new settlement appearing, the order of removal from Somerly must be quashed.

Str. 232.

10. H. 10 W. St. Michael's Bedingham and King fton Beaufey. Order quashed on Order reversed on the appeal is conclusive only as to the parish ac the merits, conquitted; but the first parish may remove again to any parish not clusive only beparty to the former removal. 2 Salk, 486.

I .9 G.

and the court; If on appeal to the fessions an order be discharged, upon the appeal,

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T. 9 G. Foston and Carlton. Two justices send a poor person from Foston to Carlton. On appeal the order is quashed; and at three months end, two justices, without shewing any new settlement since the last order, make a new order to remove him from Foston to Carlton a second time. But by the court, The last order must be quashed: The case of Barrow and Ingoldsby, E. 11 An. was at the distance of nine months, but the court quashed it, because there could be no inconvenience in putting them to shew a

new settlement. Str. 567.

E. 19 G. 2. Ofgathorpe and Diferth. A person was removed by order of two justices from Diferth to Ofgathorpe; which order on appeal was discharged. He was by a second order sent from Diferth to Ofgathorpe as a certificate man; and upon an appeal it was stated, that the first removal was before he became chargeable, and the second after he became so: and the sessions were of opinion, that the first determination was not final between the parithes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it hath been determined, that a reversal is final between the parties. But by the court, So it would be, if the special matter did not appear: a certificated person cannot be sent back, until he is actually a charge; a removal before is premature: The consequence of which only is, that he must be suffered to remain till he doth become chargeable; but not to make a premature removal final for ever. The last orders must be confirmed. Str. 1256.

Order quashed for form, not conclusive between the par-

Superintendency of the court of hing's bench.

11. An order of two justices, if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. Folly 276.

12. It was moved for fetting afide an order of fessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form.

M. 9 An. South Cadbury and Braddon. On appeal to the selfions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say, whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound, but if on the merits, the parish in consequence is hereby discharged for ever. But by the court; The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the fessions reverse the first order, and that being removed appears to be good, this court will intend it was reversed on the

merits, and affirm the order of fessions.

appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

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But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears naught. 2 Salk. 607.

So that the case is this: If the sessions by their order do barely affirm or quash the order of the two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears good as to form, and is confirmed by the sessions, the court will intend it was confirmed upon the merits; If it is good as to form, and quashed by the sessions, the court will intend it was quashed upon the merits; If it is bad as to form, and is confirmed by the sessions, the court will quash the confirmation, because it appears to be erroneous; If it is bad as to form, and is quashed by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely assirm or quash the order of the two justices, but do set forth the reasons of their said order, and state the case specially thereupon; then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises upon those facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by certiorari, may have it determined there by the judgment of that court, who will quash or consirm the order of sessions as they see cause.

# IV. Of the poor rate, and other helps towards their relief.

- i. Of the poor rate.
- ii. Taxing others in aid.
- iii. How far parents and children are liable to maintain each other.

#### i. Of the poor rate.

1. The churchwardens and overseers of every parish, or the Making a rate. greater part of them, shall raise weekly or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the said parish) a convenient stock of slax, hemp, wood, thread, iron, and other ware and stuff, to set the poor on work; and also competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor

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as are not able to work, and also for the putting out poor children apprentices. 43 El. c. 2. s. 1.

The churchwardens and overseers H. 2 An. Tawney's case. The concurrence of the inhabitants in making a rate, is not at all necessary; for by these words the churchwardens and overseers may make one without them. L. Raym. 1013. 2 Salk. 531.

Sball raife, weekly or otherwise by taxation] T. 19 G. 2. K. and the churchwardens of Weobly. The court resused to grant a mandamus, directing to insert particular persons in the poor rate, upon assidavits of their sufficiency, and being lest out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went surther, than to oblige the making a rate, without medling with the question, who is to be put in or lest out; of which the parish officers are the proper judges, subject to an appeal. Str. 1259.

By taxation] By this statute the taxation ought to be equal; and therefore ought to be continually altered as circumstaces alter.

2 Salk. 526.

M. 12 W. K. and Audly. A rate was agreed on in 1665, by the inhabitants of Audly, which had been followed ever fince till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By Hole Ch. J. The old rate, however just at first, may be unequal now, and therefore the justices cannot make a standing rate, for lands may be improved. 2 Salk. 526.

H. 2 G. K. and Clerkenwell. An order was quashed, which was made to confirm a poor rate, which rate was made according to the land tax: Objected, that this taxation was not equal, because the personal estate in the publick funds is not chargeable to the land tax, but it is to the poor: And by the whole court this

rate for that reason was set aside. Fol. 12.

Of every inhabitant] Where persons shall come into, or occupy any premisses, out of which any other person assessed shall be removed, or which at the time of making such rate was unoccupied, then every person so removing from, or coming into, or occupying the same, shall be liable to pay such rate, in proportion to the time that such person occupied the same respectively, under the like penalty of distress, as if such person so removing had not removed, or the person coming in or occupying had been originally affested in such rate; which proportion, in case of dispute, shall be ascertained by two justices. 17 G. 2. c. 38. st. 12.

Of every inhabitant, parson, vicar, and other] Under these words seems to be included the taxation of personal estates; and real estates are charged by the words next after.

And when goods or personal estate are rated, it ought to be done in the same proportion as lands are taxed, namely, every 100%, at the rate of 5% a year. Read. Poor.

Every inhabitant - and every occupier of lands, &c.] A person who hath lands in his occupation, and a stock of goods and wares besides,

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besides, as a draper, grocer, and the like, may be taxed for both, but not for such stock or goods with which he uses to manure his lands. Read. Poor. L. Raym. 1280.

Occupier] The farmer or occupier shall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice: but if he be possessed of a sum of money, or other personal estate, he may be taxed for that. L. Raym: 1280. Dalt. 165.

Of lands] E. I An. By Holt Ch. J. Hospital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a greater burden upon his neighbours. 2 Salk. 527.

Tithes] H. 4 G. K. and Turner. The defendant being affessed towards the poor rate for his tithes as vicar, appealed to the sessions, where he is absolutely discharged. But by the court, As vicar he is chargeable by the 43 El. and the sessions hath only power to moderate, but not discharge. And the order of sessions

was quashed. Str. 77.

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T. 8 G. K. and the inhabitants of Lambeth. The parson lets his tithes to farm; and the farmer agrees with the tenant of the land, that in confideration of his paying fo much, he shall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the question. And the sessions discharge the lesse of the parlon, and tax the tenant of the land. But by the court, The order must be quashed. The farmer of the tithes is prima facie liable to the poor rate, and therefore unless he can throw that charge over upon another, the tax must be made upon him. tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and no body can fay, but that though the parion thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under-lease of a thing that lies only in grant. Suppose it was the case of underwoods, which are sold standing, and the vendee grubs them up; can it be imagined, that makes him the occupier; or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, fince he has no more title to them than any stranger whatloever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a modus, it was never thought but that the parson was chargeable as occupier of the tithe: therefore there being no colour to charge the tenant of the land, the order of feftions must be quashed. Str. 525.

Coat

19002. (Rate.)

Coal mines, or faleable underawoods] That is, proportioning them to an annual benefit. Dalt. 165.

In the faid parish A man having lands in other parishes than where he lives, the same being in lease, or not in lease, he is to be taxed in the parish where he lives, according to his visible estate there, and not for his lands or rent in another parish. Dalt. 165.

And by the 17 G. 2. c. 37. Where there shall be any dispute in what parish or place, improved wastes, and drained and improved marsh lands lie, and ought to be rated; the occupiers of fuch lands, or houses built thereon, tithes arising therefrom, mines therein, and faleable underwoods, shall be rated to the relief of the poor, and to all other parish rates, within such parish and place which lies nearest to such lands; and if on application to the officers of fuch parish or place, any dispute shall arise, the justices at the next festions after such application made, and after notice given to the officers of the feveral parishes and places adjoining to fuch lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally affessed, whose determination therein shall be final. But this shall not determine the boundaries of any parish or place, other than for the purpose of rating such lands to the relief of the poor, and other parochial rates. f. 1, 2.

2. By the aforesaid statute of the 43 El. the said rate and taxation shall be made, with the consent of two justices, one whereof is of the quorum, dwelling in or near the parish or division. s. 1.

And this confent is usually given, by the justices figning the

fame, with their allowance thereupon.

But this consent is to be understood of two justices out of seffions; for the sessions have no original power to order an affestment to be made, but only if it come before them by way of appeal: for in such case the party would be deprived of the benefit

of appealing. L. Raym. 798.

M. 7 G. K. and the justices of Dorchester. A mandamus issued to the justices to fign a poor rate made by the churchwardens and and overfeers. Before the return a motion was made to superfede it, for feveral objections to the fairness of the rate; and that this would be speedier and better for the poor, than to reserve the debate of them for a formal return. But by the court, The two justices are necessary to sign the rate only by way of form; for it is the churchwardens and overfeers that have the power of making it; and whether it be a fair rate or not, is proper for the jurifdiction of the fessions, and was never intended for our examina-The supersedeas being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate: and the court having before given their opinion of this upon the motion, they refented this usage so far, that they quashed the return, and ordered an attachment against the justices, who thereupon submitted, and returned that they had allowed the rate. Str. 393.

Allowance of the rate by the justices.

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3. The churchwardens and overfeers shall cause publick notice to be Rate to be pubgiven in the church, of every rate for relief of the poor, allowed by lished. the justices, the next Sunday after such allowance; and no rate shall be reputed sufficient to be collected, till after such notice given. 17 G. 2. c. 3. f. t.

4. And they shall permit any inhabitant to inspect such rate at all Any person may seasonable times, paying 1 s. and shall give copies on demand, being inspect the same.

paid 6d. for every 24 names. 17 G. 2. c. 3. f. 2.

And if any churchwarden or overfeer shall not permit any inhabis tant to inspect, or refuse to give copies as aforesaid, he shall forfeit

201. to the party grieved. f. 3.

5. If any person shall be aggrieved by any affessment, or shall Appeal against have any material objection to any person's being put in, or left out of the rate. fuch affessment, or to the sum charged on any person or persons therein; be may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next sessions after. 17 G. z. c. 38. f. 4.

And on all appeals from rates, the justices shall amend the same, in such manner only as shall be necessary for giving relief, without altering such rates, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to set aside the same, then they shall order a new rate

to be made. id. f. 6.

And the court may award costs to either party, as in cases of

fettlements by the 8 & 9 W. id. f. 4.

6. True copies of the rates shall be entred in a book, by the church- After appeal, wardens and overfeers, within 14 days after all appeals from such rates to be enrates are determined; and they shall attest the same, by putting their tred in a book, names thereto; and all such books shall be kept by the churchwardens and overseers for the time being, whereto all persons liable to be afsessed may freely resort, and shall be delivered over from time to time, to the new churchwardens and overfeers, as foon as they enter into their offices, to be preserved and produced at the sessions when any appeal is to be heard. 17 G. 2. c. 38. f. 13.

7. It shall be lawful as well for the present as subsequent church. Rote to be levied wardens and overfeers, or any of them, by warrant from any two by diffress.

such justices, one whereof is of the quorum, to levy the said sums, and all arrearages, of every one that shall rifuse to contribute according as they shall be assessed, by distress and sale. 43 El. c. z.

And by the 17 G. z. c. 38. The goods of any person assessed, and refusing to pay, may be levied by warrant of distress, in any part of the county; and if sufficient distress cannot be found within the county, on oath made thereof before a justice of any other county (which oath shall be certified in the warrant) the goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and if any person shall be aggrieved by such distress, he may appeal to the next sessions for the county or precinct where the affeffment was made. f. 7.

But by Holt Ch. J. in the case of Tracy and Talbot, T. 3 An. The rate cannot be distrained for by virtue of a general warrant VQL. II.

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3. The

# 10002. (Rate.)

made before the rate; but there ought to be a special warrant on purpose. 2 Salk. 532. That is to say, the non-feasance of the party shall not be lest to the judgment of the officer, who may out of private resentment sell his neighbour's goods without sufficient cause; but oath of the resusal must be made before the justices. And it is reasonable that the party shall be heard in his desence; for he may shew cause variously why a distress should not be granted; as, that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or resusal had been made, and the like.

The form of the summons in which case may be this:

Westmorland To A. O. of the parish of \_\_\_\_\_ in the said county, yeoman.

W E whose names are hereunto set and seals affixed, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby summon you personally to appear before us at the house of \_\_\_\_\_ in the said county, on\_\_\_\_ the \_\_\_\_ day of \_\_\_\_ at the hour of \_\_\_\_ in the forenoon of the same day, to shew cause suby you refuse to pay the rate or assessment made for the relief of the poor of the said parish for this present year; otherwise swe shall proceed as if you had appeared. Given under our hands and seals the \_\_\_\_ day of \_\_\_\_ in the year of our lord \_\_\_\_

And where any distress shall be made, for money justly due for relief of the poor, the distress it self shall not be deemed unlawful, nor the parties making it be deemed trespassers, for any defect or want of form in the warrant for the appointment of overfeers, or in the rate, or in the warrant of distress thereupon; nor shall the parties distraining be deemed trespassers ab initio, on account of any irregularity, which shall be afterwards done by the parties distraining; but the party aggrieved by such irregularity, may recover full satisfaction for the special damage, and no more, in an action of trespass, or on the case. But where the plaintiff shall recover in such action, he shall be paid his full costs. But no plaintiff shall recover in any action, for any such irregularity, if tender of amends hath been made by the party distraining, before such action brought. 17 G. 2. c. 38. f. 8, 9, 10.

such action brought. 17 G. 2. c. 38. f. 8, 9, 10.

8. In defect of fuch distress, it shall be lawful for two such justices, to commit such person to the common gaol, there to remain without bail or mainprize, until payment of the same. 43 El.

c. 2. f. 4.

9. And if any person shall neglect to pay to such overseers, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors the sums which are allowed to be due to them in their accounts. 17 G. 2. c. 38. s. 111.

10. E. 5 G. 2. K. and Uttoxeter. Upon great debate, and fearch of precedents, it was held, that a certiorari would not lie to remove the poor rate it felf, the remedy being to appeal, or by action when a diffress is taken, which will answer all the ends of

Commitment for want of distress.

Arrears to be levied by the succeeding everseers.

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ends of justice justice in coming at an equal rate; whereas if the rate it felf should be required to be fent up, great inconveniences and delays would follow. Str. 932. Cofes of S. 317.

E. 7 G. 2. K. and justices of Salop. The true objection against a certiorari is, that if rates were removable, the poor might be starved whilst the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refused to do it. Seff. C. V. 1. 201. Str. 975.

#### ii. Taxing others in aid.

1. If the said justices do perceive, that the inhabitants of any Hundred contriparish are not able to levy among themselves sufficient sums for the purpoles aforefaid, then the faid two justices (I Q.) shall tax, rate, and affels as aforefaid any other of other parishes, or out of any parish within the bundred, to pay such sums to the churchwardens and overfeers of the said poor parish, for the said purposes, as the said justices shall think fit. 43 El. c. 2. 1. 3.

That the inhabitants of any parish are not able ] H. 8 An. Order of two justices: The case was thus; There were two vills in one parish, and the justices recite in their order, that one of the vills was very rich, and the other very poor; and further, that the vill which was rich, did not pay half so much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; viz. because they do not pay half so much as the poor vill does, without shewing that either vill pays any thing to the poor. the court; As to the first objection, surely this will come with n the equity of the statute, tho' the statute only makes mention of parishes; and it is highly reasonable, that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty. Foley 25.

Then the said two justices T. 2 J. 2. K. and Griesly. fessions rated the adjacent parishes: Quashed; because the statute appoints it to be done by the two justices, and hereby they prevent an appeal. Cases of S. 259.

The said two justices shall tax, rate, and assess T. 12 G. 2. St. Mary's and St. Peter and Paul's in Marlborough. Two justices order the churchwardens and overfeers of St. Peter and Paul's to affels, raife, and levy a fum towards the maintenance of the poor of St. Mary's. But the order was quashed by the court; because the justices had delegated their power to the churchwardens and overleers, whereas by the statute they themselves are to make the rate on all, or on particular persons. Str. 1114.

Any other of other parishes] M. 32 C. Resolved, that the juflices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. Comb. 309. 1 Ventr. 350.

# 10002. (Rate.)

T. 12 G. K. and Boroughfen. There was a taxation of feveral persons in a parish: Objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable, that feveral persons in a parish should be charged, and not all, but that the words of the act are very strong; and did not quash the order for this objection. Foley 29.

Within the hundred ] T. o An. Boroughfen and St. John's. Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole court. Foley 27.

H. 8 An. Motion to quash an order of two justices, which was made to affess the parishes of St. Stephen and St. Mary May. dalen in Norwich, in aid of the parish of St. Benedict, which was not able to maintain its own poor. Objection, These parishes are not in the same hundred; it is in Norwich, where there is no hundred, so the justices have no jurisdiction. And by Holt Ch. J. the order must be quashed. Foley 31.

As the said justices shall think fit ] E. 12 G. K. and St. Mary's in Marlborough. An order was made for a neighbouring parish to contribute, so long as we the faid justices shall think fit. But by the court, It must be quashed; for the discretion that is lest in the justices, is as to the quantum, and not as to the duration of the contribution. Str. 700.

M. 6 W. K. and Knightly. A fum in gross was taxed upon a neighbouring parish, for a whole year; which was objected to as unreasonable, because their ability may change: nevertheless the

order was confirmed. Comb. 309.

T. 6 G. K. and Telscombe. By the court, The order for the contributory parish to make a rate at 6 d. in the pound is ill for incertainty: it should have been, to raise such a sum certain. Quashed. Str. 314.

T. 12 G. 2. Case of the parish of St. Peter and Paul in Mark Two justices, reciting the inability of the parish of St. Mary to maintain its own poor, order the parish of St. Peter and Paul to contribute 60 l. for the maintenance of the poor of the other parish. And objection being made to their ordering such a gross sum, the court held it in that respect to be well. Str. 1114.

2. And if the Said hundred shall not be thought by the faid justices able and fit to relieve the faid several parishes not able to provide for themselves, as aforesaid, then the justices at their general quarter sessions shall rate and assess as aforesaid, any other of other parishes, or out of any parish within the county. 43 El. c. 2. s. 3.

T. 3 G. K. and Percivall. Order of fessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the lelfions tax other parishes in another hundred within the same county. It was moved to quash it, and infifted that the statute gives no authority to the fessions to charge people out of the hundred, till two justices have inquired whether any parish in the hundred can contribute: The fiff application to be to two justices, and the second to

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the fessions. Parker Ch. J. I do not fee, to what purpose it would be, for the two justices to make an order, only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appears, which charges any parish within the hundred, it is a fufficient ground for the fessions to act. If the two justices had charged any parish within the hundred, that would have stopped the fessions from proceeding; and the fufficiency of the hundred depends on this, whether two justices have ever charged the hundred. - If the faid hundred shall not be thought by the said justices able. — that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the sessions be ousled of their jurisdiction, notwithstanding the first adjudication. Eyre J. Here are two jurisdictions, that of the two justices, and that of the fessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the fessions within it. There need be no appeal from an adjudication of two justices, for that would be to ap-There need be no appeal peal from a nullity. And the order was confirmed. Str. 56.

#### iii. How far parents and children are liable to maintain each other.

1. The father and grandfather, mother and grandmother, and Parents and children of every poor, old, blind, lame, and impotent person, or children mutather poor person not able to work, being of a sufficient ability, ally liable. Shall at their own charges, relieve and maintain every such poor person, in that manner, and according to that rate, as by the justices in sessions shall be assessed; on pain of 20 s. a month. 43 El. C. 2. 1. 7.

Which penalty shall go to the use of the poor of the same parish, and be levied by some or one of the churchwardens or overseers, by warrant from two such justices (IQ.) by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or maintrise, till the said forfeitures shall be paid. S. 2, 11.

Father and mother] T. 9 An. Q. and Clentham. It was moved to quash an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court; 'The husband ought to provide for the daughter in law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. Foley 39.

E. 10 An. 2, and St. Botolob's Aldgate. The fingle question was, Whether the husband shall be chargeable to maintain his wife's children by a former husband: And it was resolved, he was, during the wife's life, in her right; but not after. F ley 42.

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There was an order upon the mother, who was married to a fecond husband, to maintain her children which she had by the former husband: But by the court, a seme covert cannot be charged, but they ought to have charged her husband. Foley 44.

M. 7 G. 2. K. and Dempson. Order upon the father to maintain the son's wife, after a divorce a mensa & thoro for adultery, was quashed on the authority of K. and Munden (hereaster following), she not being a natural relation of the father. Str. 955.

Grandfuther and grandmother] M. 7 C. K. and Reeve. The reputed grandfather or grandmother are not within the statute;

for a baltard is filius populi. 2 Bulfir. 344.

H. 7 C. Gerard's case. The question was, Whether a grand-father is bound to maintain his grandchild in law, having no portion with his grandmother. Whitlock and Croke Justices, both did agree, if he had a portion with the grandmother, he ought to maintain her grandchild during her life; but in this case it appeared that the grandfather and grandmother had lived together 19 years, and tho' he had nothing with her, yet now by the wise's industry, they were of ability. Whitlock thought, that he ought to provide for the grandchild during the grandmother's life; and Croke that he ought not. 2 Bussis 246.

And children] T. 5 G. K. and Mund n. Order, reciting that Munden had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By Pratt Ch. J. The cases which have hitherto been, were either where the judges were divided, or the matter came not directly in question, or was only a case at a judge's chamber. It never came judicially before the whole court till now. - And as it is resintigra, on confideration we are all of opinion, that the fon-inlaw is not bound, either within the words or intent of the slatute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to inforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this case. And the order must be quashed. Str. 190. But it doth not appear from this report, whether the wife was alive

Undersheft and Jacob Mendez de Breta. The defendant being a Jew, had an only daughter, who was converted from Judaism, and embraced Christianity. Whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her zos, a month. But because they did not alledge that she was poor, or likely to become chargeable, the order was quashed. L. Resm. 699.

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E. 1 G. K. and Gulley. It was moved to quash an order of sellions. The order set out, that one Mary Gulley was in a poor destitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2 s. 6 d. a week, till further order. Objected, It did not appear, that she was lame, blind, or unable to work; so that tho' she was in a destitute condition, it might be because she would not work: And upon this exception the court quashed the order of fessions, Foley 47.

Being of a jufficient ability] H. 12 An. 2, and Hallifax. der for the father-in-law to pay so much a week to his daughterin-law, was quashed, because it was not said that he was of a

sufficient ability. Cases of S. 52.

In that manner as by the justices in sessions shall be assessed E. 5 An. Jenkins's case. An order of sessions was made, that the defendant should pay 2 s. a week towards the support of his father, till that court should order the contrary. Which was held good; because it was indefinite, and no set time limited: and if an estate happened to fall to him, they might apply to the justices; 2 Salk. 534. otherwise if a time was limited.

By the justices in sessions If the child live in the county of Middlefex, and be maintained by the parish there, and the grandfather lives in the county of Suffolk, the justices of Middlesex can make no order therein, but the justices of the county of Suffolk must make order. 2 Bulftr. 346.

As by the justices in sessions shall be assessed T. 9 An. 2. and There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. By the whole court, they cannot fend the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a week. Foley 41.

2. Whereas sometimes men run away, leaving their wives and Parents runnin children, and sometimes women run away, leaving their children, away. upon the charge of the parish, altho' such persons have some estates which should ease the parish of their charge, in whole or in part; It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive fo much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order and direct, towards the discharge of the parish or place, where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter fessions, it shall be lawful for the justices there, to make an order for the churchwardens or overfeers, to dispose of such goods or chattels by fale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid. 5 G. c. 8. s. 1.

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# 10002. (Rate.)

And the faid churchwardens and overfeers shall be accountable to the justices at the quarter sessions for all such money as they shall so receive. 1. 2.

And further to compel hulbands and parents to maintain their own families, the law hath also provided, that all persons running away out of their parishes, and leaving their families upon the parish, shall be deemed and suffer as incorrigible rogues. 7 J. c. 4. f. 8.

And if a person doth but threaten to run away, and leave his wife or children upon the parish; be shall, on conviction before one justice, by confession, or oath of one witness, be committed to the bouse of correction, for any time not exceeding one month. 17 G. 2.

And by the 7 J. c. 4. If any man or woman shall threaten to run away and leave their families upon the parish, and the same be proved by two witnesses on oath before two justices of that division; the person so threatning shall be sent to the bouse of correction (unless be can put in sufficient sureties for the discharge of the parish) there to be dealt with as a sturdy and wandring roque, and to be delivered at the sessions, and not otherwise. 1.8.

For the further maintenance of the poor, there are many fines and forfeitures payable to their use; as, for swearing, drunkenness, destroying the game, and in many other instances, which are to be found under their proper titles.

# Form of a poor rate.

A N assessment for other purposes i lating to the poor, for	n the necessary in the several action the tarish of -	relief of the p	toor, and for the at mentioned re-
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#### Allowance of the rate.

W E two of his majesty's justices of the Said county, one whereof is of the	the peace in and for the
VV faid county, one whereof is of the	he quorum, do consent
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Warrant

# Warrant of distress for a poor rate.

To the churchwardens and overfeers of the poor Westmorland. of the parish of - in the said county of -

WHEREAS in and by a rate and affessment made, affessed, allowed, and published, according to the statutes in that case made and provided, A. O. an inhabitant and occupier of an bouse in the said parish of -was duly rated and assessed for and towards the necessary relief of the poor of the faid parish for this present year the sum of 3s. And whereas it duly appeareth unto us, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, as well upon the oath of O. P. overseer of the poor of the said parish, as otherwise, that the said sum of 3 s. bath been lawfully demanded of the said A. O. and that the said A. O. hath refused and doth refuse to pay the same: These are therefore to require you forthwith to make distress of the goods and chattels of him the said A.O. And if within the space of [four] days next ofter such diffress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arifing by such sale, that you detain the said sum of - and also your reasonable charges of taking, keeping, and selling the said distress; rendring to him the said A. O. the overplus on demand. And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to law doth appertain. Given under our hands and feals - day of -

# V. Of the relief and ordering of the poor.

1. By the statute of the 43 El. c. 2. the several parishes were Poor to be mainrequired to maintain and employ their own poor, under the ditained within their own parection of two justices; in consequence whereof, before the sta-rishes. tute of C. 2. the justices were wont to fend the poor to their own parishes to be relieved and ordered: and there is no power given by either of those statutes, nor by any other (except in the case of certificate persons, and in the case of contracting as is herein after mentioned) to the churchwardens or overfeers to relieve any persons out of their own parish, much less any obligation upon them to exercise that part of their office out of their own jurisdiction.

And in the case of Chypton and Rawistock, E. 11 An. it was adjudged as follows: There was an order reciting, Whereas John Sand rson and his wife are last settled in Chypton; these are to order you the churchwardens of Clypton, to repair to the parish of Ravistock, and to relieve them, being so sick that they cannot be removed. By the court; The justices have no authority to send for officers out of another parish, but the parish where the

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# 10002. (Relief.)

poor refide are bound to maintain them as long as they continue with them. And by Powell J. altho' they be not parishioners, yet they are to be relieved till they are carried to their own parish. Caf. of S. 49.

Order to be taken therein.

2. By the 43 El. c. 2. The churchwardens and overfeers, with the confent of two justices (I Q.) shall take order from time to time. for setting to swork the children of all such whose parents hall not by the faid churchwardens and overfeers, or the greater part of them, be thought able to keep and maintain their children; and for fetting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work. f. 1.

And the faid justices, or one of them, shall send to the bouse of correction, or common gaol, such as shall not employ themselves to

work, being appointed thereunto as aforesaid. 1.4.

Poor, and not able to work ] M. 3 G. K. and the inhabitants of Highworth. There was an order to pay 3 s. weekly to a poor person, by the parish of Highworth, so long as he shall continue poor. It was objected, that by the flatute it ought to appear that they are poor and impotent, Parker Ch. J. I favour these orders as much as I can, because no body takes care to draw them up for the poor. But it must be quashed. Str. 10.

On the authority of this case, E. 3 G. K. and Stokegurfey, an order was quashed for the same fault. So, E. 4 G. K. and Tip-

per, an order to maintain a daughter-in law. id.

Setting up trades.

3. By the 3 C. c. 4. The churchwardens and overfeers may, by the consent of two justices (1 Q.) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the affent of that one justice, fet up and use any trade, mistery, or occupation, only for the setting on work, and better relief of the poor. 1. 22.

Erecting cottages.

4. The churchwardens and overfeers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within their parish is parcel, and on agreement with him made in writing, under his band feal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and feal, may build in fit and convenient places of habitation in fuch waste or common, at the charge of the parish, or otherwise of the hundred or county as afortfaid, to be rated and gathered in manner before expressed, convenient bouses of dwelling for the said impotent poor; and may place inmates, or more families than one, in one cottage or bouse, notwithstanding the statute of the 31 El. Which cottages, or places for inmates, shall not be employed for any other habitation, but only for impotent and poor of the same parish placed there by the churchwardens and overseers. 43 El. c. 2. f. 5.

5. It shall be lawful for the churchwardens and overfeers, in Overfeers may any parile, township, or place, with the consent of the major part contract for the maintenance and of the parishioners or inhabitants, in westry, or other parish or pub. employment of lick meeting for that purpose assembled, or of so many of them as the poor.

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hall be so affembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all fuch poor in their respective parishes, townships, or places, as shall defire to receive relief or collection, and there to keep, maintain, and employ all fuch poor persons, and take the benefit of the work, labour, and service of any fuch poor persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons, who shall be there kept or maintained. And if any poor person shall refuse to be lodged, kept, or maintained in such bouse or houses, he shall be put out of the parish book, and shall not be intitled to receive relif from the churchwardens and overfeers. 9 G. c. 7. f. 4.

or hire fuch house or houses, it shall be lawful for two or more such places may join parishes, townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, townhips, or places, in westry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township, or place, fignified under his hand and seal, to unite in purchafing, biring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes, townships, or places so uniting, and to take and

6. And where any parish or township shall be too small to purchase Two or more

have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed. And if any poor person in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the bouse bired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not intitled to ask relief. 9 G. c. 7. f. 4.

7. And it shall be lawful for the churchwardens and overfeers of The overleers of any parish, township, or place, with the consent of the major part one place may of the parishioners or inhabitants of the said parish, township, or contract with place, where such house or houses shall be purchased or bired for the without joining. purposes aforesaid, in westry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township or place, for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet. And if any poor person of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such bouse or bouses, be shall be put out of the collection book, and not be intitled to have 9 G. c. 7. f. 4.

8. No person shall be allowed to have or receive collection at the Order of maintecharge of the parish, but by authority under the hand of one justice nance by the jaresiding within such parish, or (if none be there dwelling) in the flices.

parts

# 10002. (Relief.)

parts near or next adjoining, or by order of the justices in festion, except in cases of pestilential diseases, plague, or small pox, for such families only as shall be therewith infected. 3 W. c. 11. f. 11.

And no justice shall order relief to any poor person, until oath be made before bim of some matter, which he shall judge to be a reasonable cause for baving such relief; and that the same person bad by himself, or some other, applied for relief to the parishioners at some westry or other publick meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice bath sum. moved two of the overfeers to show cause why such relief should not be given, and the person so summoned bath been heard or made default to appear. 9 An. c. 7. f. 1.

Persons relieved

9. And there shall be provided and kept in every parish, a book to be entred in a wherein the names of all persons who receive collection shall be registred, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity: and yearly in Easter week, or as often as shall be thought convenient, the parishioners shall meet in the westry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new lift made and entred. c. II. f. 11.

And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any paor person aubo is not registred in such book, as a person intitled to receive collection; on pain of 51. by distress, by avarrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by di-

rection of the justices. 9 G. c. 7. f. 2.

And badged.

10. Moreover, Every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cobabiting in the same house (such child only excepted, as shall be by the churchwardens and overfeers permitted to live at bome, in order to attend an impotent and helpless parent) shall upon the Shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large Roman P, together with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overfeers shall be directed: And if any such poor person shall neglect or refuse to wear such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged, ful ended, or withdrawn, or otherwise by committing him to the bouse of correction, to be whipt and kept to bard labour, not exceeding 21 days; And if any church-warden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he Shall forfeit 208. by distress, half to the informer and half to the poor. 8 & 9 W. c. 30. f. 2.

11. By the 24 G. 2. c. 40. No Spirituous liquors shall be fold or used in any workhouse, or house of entertainment for parish poor; as is fet forth more at large, in the article relating to spirituous li-

quors, under the title Excile.

Spirituous liquors not to be used in workhouses.

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One observation I shall here subjoin, in relation to the statute of Observation. the 9 G. c. 7. abovementioned, with regard to the contracting for the lodging, maintaining, and employing the poor together in one house; which is this, That as the best judgment of the usefulness of any law must be drawn from experience, we may pronounce this act to be very beneficial, because it hath been put in practice in many parishes and places with good effect; and I have from many years observation never known it to fail of reducing the rates in a few years very confiderably, and in some places near one half. Upon which fact this confequence arifeth, that generally the poor are better regulated in large than in small communities. And this fuggests one bad effect of the clause in the statute of the 13 & 14 C. 2. which subdivides the parishes into townships; whereby the several little villages in a parish, instead of being intent upon the employing and maintaining their poor, are often fet by the ears together about fettlements, when perhaps there is no dispute at all but that the settlement is in the parish at large. Indeed where the parish is very extensive, it may be convenient, or necessary, to subdivide. But, generally, it seemeth, that this practice hath been extended much too far. For the remedy whereof, it might be of use, to give the justices a power, and to require them, to lay together fo many townships or parishes as shall be thought expedient, containing in the whole not less than such a number of families, or not less than such a yearly value of the estates. The benefits whereof would be these: 1. Suppose ten small townwips are laid together, just nine parts in ten of the squabbles about settlements will be prevented. 2. Nine parts in ten, or if the poor are maintained in separate families as is frequently done, at least ninety nine house rents in a hundred, will 3. Abundance of cottages will be desolated, which now harbour nothing but beggars and thieves. 4. Lefs common will be destroyed, and wood consumed, for fuel. And, 5. The poor will be better ordered.

Oath of a poor person wanting maintenance.

P. of \_\_\_\_\_ in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ maketh oath, that he is very poor and impotent; and not able to provide for himself and his family, and that his lawful settlement is in the said parish of - and that on - left he did apply for relief to the parishioners of the faid parish at a westry (or other publick) meeting [or, to two of the overseers of the poor of the said parish] and was by them refused to be relieved. A. P.

Taken and made before me one of his majesty's justices of the peace for the Said county, the \_\_\_\_ day

Warrant

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# 10002. (Relief.)

Warrant thereupon to fummon the overfeers.

Westmorland. To the constables of \_\_\_\_\_ in the parish of \_\_\_\_ in the said county, and to every of them.

HEREAS A. P. of your parish bath this day made oath before me - one of his majesty's justices of the peace in and for the faid county, that be the faid A. P. is very poor and impotent, and not able to provide for himself and his family; and that be the faid A. P. did on - last apply to the parishioners of your said parish at a westry (or other publick) meeting [or, to A. B. and C. D. two of the overfeers of the poor of the faid parish and was by them refused to be relieved: These are therefore to require you in his said majesty's name, to summon two of the overfeers of the poor of the said parish, to appear before me on ---- next at the house of --- in -- in the said county, at the hour of - in the forenoon of the same day, to show cause why relief Should not be given to the Said A. P. And be you then there with this precept, to certify what you shall have done in the execution bereof. Given under my hand and feal the - day of in the -

#### Order for maintenance.

Westmorland. W HEREAS A. P. of \_\_\_\_\_\_ in the faid cou - in the parish of - in the Said county of - yeoman, bath made oath before me - one of his majesty's justices of the peace for the faid county, that he the faid A. P. is very poor and impotent, and not able to work; and that he the faid A. P. did on \_\_\_\_ last apply for relief to the parishioners of the said parish of \_\_\_ at a westry (or, publick) meeting [or, to A. B. and C. D. two of the owerseers of the poor of the said parish] and was by them refused to be relieved; And whereas A. B. and C. D. overfeers of the poor of the said parish, have been duly summoned by me, to shew cause why relief should not be given to the said A. P. and bave appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid [or, but have made default to appear before me according to such summons]: I do therefore bereby order the churchwardens and overfeers of the poor of the faid parish, or some of them, to pay unto the said A. P. the sum of - weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise ordered according to law to forbear the faid allowance. Given under my band and seal at - in the said county, the - day of year -

Contract

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#### Contract for maintenance.

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Contract

A T a publick meeting of the inhabitants of the parish of -
A in the county of for that purpose assembled, upon
usual notice thereof first given; it is contracted by and with the con-
sent of the major part of the said inhabitants so assembled as afore-
faid, between A.B. and C.D. churchwardens, and E.F. and
G. H. overseers of the poor of the said parish, of the one part, and
A. M. of - in the Said parish, yeoman, of the other part 3
That he the faid A. M. shall and will during the space of one whole
year to commence from - next ensuing, at his own proper cost
and charges, in the house in which he now dwelleth, find, provide,
and allow unto all such poor people as shall be lawfully intitled to
relief and maintenance from the faid parish, and shall be brought unto
bim by the churchwardens or overfeers of the poor aforesaid, or any
of them, or by their or any of their successors for the time being, suf-
ficient lodging, meat, drink, cloathing, employment, and other things
nucessary for their keeping and maintenance; And that in consideration
thereof, the said churchwardens and overseers of the poor, and their
fuceffors respectively, shall pay or cause to be paid to the said A. M.
the sum of - in equal proportions - The said A. M. to
have moreover and take unto himself the benefit of the said poor peo-
ples work, labour, and service during the said term. In witness
subereof the parties to these presents have hereunto set their hands,
the ——— day of ———.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *cloatbing*; setting forth in what condition they shall go, and in what condition be delivered back again.

As also, if they shall die; who shall be at the expence of burying them, and what shall become of their cloaths and other small effects.

As also, if they shall be refractory or ungovernable; who shall be at the charge of sending them to the house of correction, or

otherwise reducing them to good behaviour.

And other clauses as there may be occasion.

If two parishes or townships shall join in such contracting, it will be necessary to insert in the contract, the consent of a justice of the peace; as thus,

And the affent of the faid justice may be indorfed thereon, as follows;

within mentioned county of \_\_\_\_ and dwelling in the within mentioned

# 10002. (Account.)

tioned parish of \_\_\_\_\_ [or, near to the within mentioned parishes, or townships of \_\_\_\_\_] do consent unto, allow, and approve of the within written contrast. Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_.

#### VI. Of the overfeers account.

Account.

1. By the 43 El. c. 2. The churchwardens and overfeers shall, within four days after the end of their year, and other overfeers nominated, make and yield up to two justices (I Q.) a true and perfect account of all sums by them received, or rated and affessed and not received, and also of such stock as shall be in their hands, or in the bands of any of the poor to work, and of all other things concerning their office: And fuch sums of money as shall be in their hands, shall pay and deliver over to their successors: And the subsequent church. wardens or overfeers, by warrant from two such justices, may levy by diffress and sale of the offender's goods, the said sums or flock which shall be behind on any account to be made; and in defect of such difirefs, two fuch justices may commit him to the common goal, there to remain without bail or mainprife, until payment of the faid fum and flock: And also any such two justices may commit to the said prison, every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or maintrise, until be have made a true account, and satisfied and paid so much as upon the Said account shall be remaining in his hands. S. 2, 4.

And by the 17 G. 2. c. 38. it is enacted as follows: The churchwardens and overfeers shall yearly, within fourteen days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entred in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received; and also of all materials that shall be in their bands, or in the bands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay and deliver over all sums of money and other things, which shall be in their bands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the Jame, at the foot of the account, without fee; and the faid books shall be preserved by the churchwardens and overseers, in some publick or other place within the parish or township; and they shall permit any person assessed, or liable to be affessed, to inspect the same at all seasonable times, paying 6 d. for such inspection; and shall upon demand give copies at the rate of 6 d. for every 300 words, and so in proportion. And if they shall refuse or neglect to make and yield up such account verified as aforesaid within such time, or shall refuse or neglect to pay over the money and other things in their bands; any two justices may commit them to the common gool. till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid. 1. 1, 2.

Church.

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Churchwardens ] M. 15 C. 2. K. and Pecke. The churchwarden was committed for refusing to account, for all monies received and disbursed by him, and of all such things as concern his office. But upon an habeas corpus he was discharged; for if he be committed as overfeer, it must be so expressed in the mittimus, altho' to be overfeer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden.

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Such money as shall be in their hands, shall pay and deliver over to their successors M. 8 G. 2. K. and the justices of Somersetsbire. Mandamus to the justices, to grant a warrant for levying 30 l. 17 s. 11 d. being the balance of the last overseers account in their They return, that true it is there was fuch a balance, but that the vestry had ordered them to retain it, and employ an attorney to fue for some charity money, and get it laid out for the benefit of the poor; that one Young was fo employed, and the balance exhausted in fees, and that the overfeers had engaged to pay Young; and for that cause they had refused to grant the warrant. But by the court, There must go a peremptory mandamus; for the statute says, the balance shall be paid over to the new overfeers, under a penalty; and it is not in the power of the vestry, to dispense with the statute. Str. 992.

Until he have made a true account T. 2 W. The mayor and churchwardens of Northampton. The mayor committed the churchwardens, as overfeers of the poor, for refusing to account, and the warrant of commitment concluded, until they be duly discharged according to law. The court held the commitment void; because the warrant ought to conclude, there to remain until they shall account, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy; for in the first case, the commitment must be, until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions,

2. And if any overfeer shall remove, be shall before his removal, Overfeer redeliver over, to some churchwarden or other overseer, his accounts moving or dying. verified as aforesaid, with all assessments, books, papers, money, and other things concerning his office; and if any overfeer shall die, bis executors or administrators shall within 40 days after his decease, deliver over all things concerning his office to some churchwarden or other overseer, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid. 17 G. 2. c. 38. f. 3.

3. By the 43 El. c. 2. If any person shall find himself aggricated Appeal against by any act done by the said overseers or justices; he may appeal to the account. the general quarter sessions, whose order therein shall bind all par-

And this power of appealing generally, doth not feem to be taken away by the statute here next following; but the same being only in the affirmative, it seemeth that they may both stand together, and that the appeal may be upon either of the statutes.

Val. II. And

but shall be discharged upon performance of his duty. Carth. 153.

And upon this statute of the 43 El. the appeal is not limited to

the next fessions, but may be at any time after.

The other statute abovementioned, with regard to this matter, is as follows: If any person shall have any material objection to such account or any part thereof, he may, giving reasonable notice, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next sessions after; and the court may award costs to either party, as in cases of settlements by the 8 & 9 W. 17 G. 2. c. 38. s. 4.

So that here is power to award costs, if the appeal is to the next sessions; but if the appeal is upon the 43 El. and not to the next sessions, there is no power in such case to award costs.

And by the said statute of the 17 G. 2. c. 38. In all corporations or franchises, which have not four justices, persons aggricated may appeal, if they think sit, to the next county sessions.

M. 4 An. 2. and Hedges. On appeal upon the statute of the 43 El. against the allowance of the account by two justices, the session ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court; They should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment, in the same manner as the two justices must do. 2 Salk. 533.

T. 7 G. K. and Bartlett. An order made at the selfions relating to accounts of overseers, was moved to be quashed, because it did not appear that the accounts had been before the justices out of selfions, and they cannot come per saltum to the selfions. On the other side it was said, that it appeared there was an allowance, for the appeal is said to be against the disbursements and the allowance thereof, which the court will presume was regular. But by the court, It doth not follow, that this was an allowance by two justices, for the parish might do it; and therefore for want of jurisdiction this order must be quashed. Str. 983.

#### Allowance of the account.

Westmortand. PERUSED and allowed (having been first figured and verified on oath by A.B. and C.D. churchwardens, and E.F. and G.H. overseers of the poor) By me one of his maj sty's justices of the peace in and for the said counts, the \_\_\_\_\_ day of \_\_\_\_\_.

VII. Penalty of overfeers for the neglect of their duty.

1. In general, Overseers being negligent in their office, shall for-feit for every default 20 s. to the poor, to be levied by some or one of the churchwardens or overseers, by warrant of 2 justices (1 Q.) by distrifs; or in desict thereof, any two such justices may commit the effender to the common gaol, there to remain without boil

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or mainprise, till the said forfeiture shall be paid. 43 El. c. 2.

2. And by the 17 G. 2. c. 38. Any parish officers neglecting to obey any directions of that act, being convicted thereof on oath before two justices, in two kalendar months after the offence committed, shall forfeit not exceeding 51. nor less than 40 s. to the poor, by distress. f. 14.

3. And in all actions to be brought in the courts at Westminster, or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted. 3 W. c. 11. s. 12.

# VIII. Indemnity of overfeers in the performance of their duty.

1. By the 7 J. c. 5. and 21 J. c. 12. If any action be brought against any overseer, or other person which in his aid, or by his commandment, shall do any thing concerning his office, he may plead the general issue, and if he recovers, he shall have double costs: And such action shall be laid in the proper county, and not elsewhere

2. And by the 43 El. c. 2. Persons sued for any thing done on that act, may plead the general issue, and have treble damages with costs, and that to be assessed by the same jury or writ to inquire of the damages. 1. 19.

Pope. See Popery.

# Popery.

- I. General observations.
- II. Popish supremacy opposed and abolished.
- III. Concerning the pope's presentation to benefices.
- IV. Bringing bulls and other instruments from Rome.
- V. Popish books and relicks.
- VI. Foreign education of papists.
- VII. Penalty of perverting others, or being perverted to popery.
- VIII. Jesuits and popish priests.
- IX. Saying and bearing mass.
- X. Penalties of 12d. a Sunday, and 20l. a month, for not going to church.

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XI. Regi-

XI. Registring estates.

XII. Inrolling deeds and wills.

XIII. Double taxes.

XIV. Papists not to come to court.

XV. Not to come within ten miles of London.

XVI. Papists confined to their babitations.

XVII. Not to inherit, or take by devise.

XVIII. Shall not purchase.

XIX. Shall not present to benefices.

XX. Shall not teach school.

XXI. Disabled as to offices, law, physick.

XXII. Not to be executor, or administrator.

XXIII. Not to be guardian.

XXIV. Shall be deemed excommunicate.

XXV. Popish baptism.

XXVI. Popish marriage.

XXVII. Popish burial.

XXVIII. Armour.

XXIX. Horses.

XXX. Popish wife.

XXXI. Heir of a popish recusant.

XXXII. Protestant children of papists.

XXXIII. Oaths.

XXXIV. Minister to present papists.

XXXV. Recusants conforming.

XXXVI. Ecclefiastical jurisdiction.

# I. General observations.

1. It is to be observed in general, that popish recusants are liable to all the forseitures and disabilities, and other inconveniences, to which other recusants are liable; and to many others, to which other recusants are not liable.

For to be a reculant, doth not necessarily imply the being a papist: But a recusant is any person who resules to go to church, and worship god, after the manner of the church of England: A popish recusant, is a papist who so resulest: And a popish recusant convict, is a papist legally convicted thereof. For the want of attending to which distinction, divers authors who have treated of this subject, have fallen into consussion.

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2. There are feveral statutes made against recusants in Q. Elizabeth's reign, and the former part of the reign of K. James the sirst, which are not restrained to popish recusants only; but as there were few or no other recusants but papists at that time, they have regard chiefly to persons of that profession: and therefore they are inserted under this title: altho' the words of them do extend, and the act of toleration supposes them to extend, to all non-conformists in general. But the force of them as to protestant differences is taken away by that act. But no papist, or popish recusant,

shall have any benefit by the act of toleration.

3. The reader will observe from the dates of the several acts, how the penalties have from time to time been inforced and inlarged, upon every fresh attempt against the government; especially at the several periods during Q. Elizabeth's reign, after the powder plot in the reign of K. James the first, and after the rebellion in 1715. One of the acts particularly, immediately after the powder plot, which will often occur in the following sections, is, in the statutes at large, a well penned act. It is much in the style of Lord Coke; strong, and clear: where the many words are used, yet none of them can be wanted. And probably it was drawn up by him. It brings the several laws together, which had been enacted on the subjects it treats of; and renders them all useless and dead, as much as if it had repealed them in express words. And it may be a pattern in reducing into one general law, the several statutes which on many heads are now become very numerous, and not a little consused.

4. In perufing this whole title, wherein the laws against papists are brought clearly together in one view, it will occur possibly to remark, that they are many, and perhaps severe. But it ought to be considered withal, how protestants are treated in popish countries; and that the offences intended to be guarded against by these laws, are not the stealing of an ox, or the burning of an house, or any other invasion of private property, but dethroning

the prince, and overturning the government.

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'Tis true, these laws in the present age have been permitted to sleep in a great measure, and that even at a time when a rebellion was advancing, and a foreign invasion attempted, in favour of a popish prince and government: but they are suffered nevertheless to continue in force; perhaps that it may appear to the enemies of our constitution, that if they are spared, it is not for want of power, but of inclination to punish.

# II. Popish supremacy opposed and abolished.

1. Whoever shall affirm, that the king hath not the supreme authority in causes ecclesiastical, shall be excommunicated ipso facto, and not restored but by the archbishop on his repentance. Can. 2.

2. By the statute of the 27 Ed. 3. st. 1. c. 1. which is called the statute of provisors; persons suing in a foreign realm, or impeaching judgment given in the king's court, shall incur a pramunire; that is, shall have a day given to appear in person to X 3

answer to the contempt, and if they come not, they shall be out of the king's protection, their lands and goods shall be forfeited, and their bodies imprisoned, and ransomed at the king's will.

And if any bring into the realm a summons or excommunication against any one executing the statute of provisors, he shall

fuffer pain of life and member. 13 R. 2. ft. 2 c. 3.

3. And by the 5 El. c. 1. If any person shall maintain the authority of the fee of Rome in this realm, he shall incur a pramunire for the first offence, and for the second shall be guilty of high treason. Prosecution to be within a year. And the justices in sessions may enquire thereof, and shall certify the same into the king's bench. f. 2, 3, 4, 10, 11.

4. And if any person shall put in practice to absolve or with. draw any subjects from their allegiance, or if any person shall be willingly so absolved or withdrawn; he, his aiders and maintainers shall be guilty of high treason. The trial to be at the affizes, or in the king's bench. 3 J. c. 4. f. 22, 23, 25.

#### III. Concerning the pope's presentation to benefices.

1. No person by authority from the court of Rome, shall di-Aurb any person of holy church, presented or collated by the king or his subjects; on pain of fine and imprisonment. 25 Ed.

2. None shall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a præmunire.

3 R. 2. c. 3.

3. No alien shall purchase or occupy a benefice in England;

on pain of a præmunire. 7 R. 2. c. 12.

4. He that shall go out of the realm, to procure a benefice, shall be out of the king's protection; and the same shall be void. 12 R. 2. c. 15.

5. If any person shall accept a benefice from the pope, he shall be banished for ever, and his lands and goods forfeited. 13 R. 2.

ft. 2. c. 2.

6. No provision of a benefice not vacant, made by the pope, and licensed by the king, shall be available; but persons endeavouring to exclude the incumbent thereby, shall incur a pranta nire. 7 H. 4. c. 8. 3 H. 5. ft. 2. c. 4.

#### IV. Bringing bulls and other instruments from Rome.

1. By the statute of the 16 R. 2. c. 5. (which is the famous statute called the statute of pramunira) If any person shall purchase, or bring into the realm, any bulls or instruments from Rome, or elsewhere, they shall incur a præmunire; that is to say, they shall be put out of the king's protection; and their lands and goods shall be forfeit to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or else process shall be awarded against them by pramunire facias (so called from those words in the writ).

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2. But by a subsequent statute, if any person shall get or publish any bull or instrument from Rome, he shall be guilty of high treason. And his aiders and comforters shall incur a pramunire. And concealing the same shall be misprision of high treason. 13 El. c. 2. J. 3, 4, 5. And the justices of the peace may enquire thereof, within a year and day. 23 El. c. 1. J. 8.

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### V. Popish books and relicks.

1. If any person shall bave in his custody any books called antiphoners, missals, grailes, processionals, manuals, legends, pies, portuasses, primers in latin and english (except those set out by K. H. 8.) couchers, journals, ordinals or other books for the service of the church, not set forth by the king; he shall forfeit for the first offence 40 s. for the second 4 l. and for the third shall be imprisoned at the king's will. And the justices of the peace in their general sessions may hear and determine the same. 3 & 4 Ed. 6. c. 10.

2. No person shall bring from beyond the seas, nor shall print, sell, or buy any popish primers, ladies psalters, manuals, rosaries, popish chatechisms, missals, breviaries, portals, legends, and lives of saints, containing superstitious matter, printed or written in any language whatsoever; nor any other superstitious book printed or written in english; on pain of 40s. one third to the king, one third to him who shall sue in any court of record, and one third to the poor of the parish where such books shall be found; and the books to be burned.

3 J. c. 5. s. 25.

3. If any person shall bring into the realm any agnus dei, crosses, pictures, beads, or such like vain and superstitious things, from the bishop of Rome, or any authorized by him to consecrate the same, and offer them to any person to be worn or used; both the bringer and receiver shall incur a præmunire: But if the receiver shall in one day's time deliver the same to a justice of the peace, or if such person to whom the same is offered shall carry the bringer before the next justice, or (if he cannot) shall disclose the offender's name and place of abode or resort, to the bishop, or to a justice of the peace, he shall not incur such præmunire. And in such case, the justice in 14 days shall signify the same to one of the privy council, on pain of incurring a præmunire. 13 El. c. 2. f. 7, 8, 10.

4. And two justices of the peace (and mayors and other chief officers in corporations) may fearch the houses and lodgings of every popish recusant convict, or of every person whose wise is a popish recusant convict, for popish books and relicks of popery: and if any altar, pix, beads, pictures, or such like popish relicks, or any popish book, shall be found in their custody, as in the opinion of the said justices, mayor, or other chief officer, shall be thought unmeet for such recusant to have or use, the same shall be presently defaced and burnt, if it be meet to be burned; and if it be a crucifix, or other relick of any price, the same to be defaced at the sessions, and returned to the owner. 3 £ c. 5. f. 26.

# VI. Foreign education of papists.

1. If any person shall contribute, or send over sea, any money or other relief to any seminary abroad; he shall incur a præmunire,

27 El. c. 2. f. 6.

2. They who be in feminaries abroad, shall return in fix months after proclamation, and conform in two days, before the bishop, or two justices of the peace; otherwise, if they return at all, without submission, they shall be guilty of high treason. 27 El.

3. If any person shall go, or send any person, beyond the feas, to be popishly educated, who shall be there so instructed, or shall fend any money or other thing for that purpose; he shall, on conviction before the judges of the king's bench, or of affize, be disabled to be plaintiff in any action, or to be committee of any ward, or executor, or administrator, or capable of any legacy or deed of gift, or to bear any office; and shall forfeit his goods, and shall forfeit his lands during life. But if he shall conform in 6 months after his return, he shall be discharged. 3 C. c. 2. 1 7. c. 4. 1. 6, 7.

4. Children, not being foldiers, mariners, merchants, or their apprentices or factors, departing the realm, on account of education, or otherwise, without licence from the king, or fix of the privy council, shall take no benefit by any gift, conveyance, defcent, devise, or otherwise, of any lands or goods, until they conform. 3 F. c. 5. s. 16. And persons sending any such child over feas, without licence, shall forfeit 1001. to him who shall fue in any court of record. 3 J. c. 5. J. 16. 11 & 12 W. c. 4.

1.6.

5. No woman, or child under 21, except failors or factors, shall pass over sea without licence of the king and council; on pain that the officer of the port shall forfeit his office and his goods, the owner of the ship his vessel, and the master his goods

and be imprisoned 12 months. 1 J. c. 4 s. 8.

6. No person, not bred up by his parents in the popish religion, shall breed up or suffer his children to be bred up in the popish religion; on pain of being disabled to bear any office, and of fuch children also being disabled to bear any office until they conform. 25 C. z. c. 2, f. 8.

#### VII. Penalty of perverting others, or being perverted to popery.

If any person shall put in practice to reconcile any subjects to popery, or if any person shall be willingly so reconciled; he, his aiders and maintainers, shall be guilty of high treason. The trial to be at the affizes, or in the king's bench. 3 J. c. 4. J. 22, on p

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# VIII. Jesuits and popish priests.

1. No jesuit or popish priest shall come into or be in the realm, on pain of high treason; unless he conform. 27 El. c. 2. f. 2,

2. And if any person shall knowingly receive or relieve any such, he shall be guilty of felony without benefit of clergy. 27

El. c. 2. f. 4.

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3. And if any person, knowing such jesuit or priest to be in the realm, shall not in 12 days discover the same to a justice of the peace or other higher officer, he shall be fined and imprisoned at the king's pleasure. And if such justice or other officer shall not in 28 days give information thereof to one of the privy council, he shall forseit 200 marks. 27 El. c. 2. s. 13.

4. And a suspected jesuit or popish priest, being lawfully examined, and resusing to answer whether he be a jesuit or popish priest, shall be imprisoned till he make direct and true answer.

35 El. c. 2. f. 11.

5. And the person who shall first discover, to any justice of the peace, any person who shall entertain or relieve any jesuit, seminary, or popish priest, within 3 days after the offence; so that by reason of such discovery any offender shall be taken and convicted; such person shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have the third part of the forseitures if they do not exceed 150% and if they do exceed 150% then he shall have 50% 3 % c. 5. f. 1.

6. If any person shall apprehend any popish bishop, priest, or jesuit, and prosecute him till he be convicted of exercising any part of the office or function of a popish bishop, or priest, he shall receive from the sheriff 100 l. reward. 11 & 12 W. c. 4.

f. I, 2.

7. If any popish bishop, priest, or jesuit, shall exercise any part of the office or function of a popish bishop or priest (except in foreign ministers houses), he shall be adjudged to perpetual imprisonment. 11 & 12 W. c. 4. f. 3, 5.

8. If any person shall contribute, or send over sea, any money or other relief to any jesuit or popish priest; he shall incur a præ-

munire. 27 El. c. 2. f. 6.

#### IX. Saying and bearing mass.

1. If any person shall say or sing mass, he shall forfeit 200 marks, and be imprisoned for a year, and till paid;

And if any person shall wilfully bear mass, he shall forfeit 100

marks, and be imprisoned for a year;

The forfeitures to be one third to the king, one third to the poor, and one third to him who shall sue in any court of record. And if not paid in 3 months after judgment, he shall be committed till he pays, or conforms. And the sessions may determine the same. 23 El. c. 1. f. 4, 9, 10, 11.

fesuits

2. If any popish bishop, priest, or jesuit shall say mass, except in foreign ministers houses, he shall be adjudged to perpetual im-

prisonment. 11 & 12 W. c. 4. f. 3, 5.

3. And the person who shall first discover to any justice of the peace any mass to have been said, and the persons that were prefent thereat, and the priest that said the same, or any of them, within 3 days after the offence, and by reason of such discovery any offender is taken and convicted; such person shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have the third part of the forfeitures, if they do not exceed 150 l. and if they do exceed 150 l. then he shall have 50 1. and after conviction of the offender, he shall have a certificate from the judges, or justices of the peace before whom the conviction shall be, directed to the sheriff or person who shall seize the goods, or levy the forfeiture, commanding him

to pay the same. 3 f. c. 5. s. 1.

4. And conveyances made by recusants to evade the penalties for faying or hearing mass, shall be void. 29 El. c. 6. s. 1.

#### X. Penalties of 12d. a Sunday, and 20l. a month, for not going to church.

1. All persons, having no lawful or reasonable excuse to be absent, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where divine service shall be performed, according to the liturgy and practice of the church of England, upon every Sunday and holiday; on pain of punishment by the censures of the church, or of forfeiting to the poor for every offence 1 s. to be levied by the churchwardens by way of diffress. 1 El. c. 2. f. 14, 24. Except diffenters qualified by the act of toleration, who refort to some congregation of religious worship allowed by that act. 1 W. c. 18. s. 2, 16.

And he who is absent from his own parish church, shall be put

to prove where he went to church. 1 Haw. 13

And one justice, on proof (in one month after default) by confession, or oath of witness, may call the party before him; and if he shall not make sufficient excuse, and due proof thereof, to the fatisfaction of the justice, such justice shall give warrant to the churchwarden to levy 12 d. to the use of the poor of the parish, for every default, by diffress and sale, rendring the overplus. For

want of distress, commitment till paid. 3 J. c. 4. J. 27, 28.

2. Every person above the age of 16 years, who shall not repair to some church, chapel, or usual place of common prayer, being convicted thereof before the judges of affize, or justices of the peace in their open quarter sessions, shall forfeit 20 1. a month, one third to the king, one third to the maintenance of the poor of the parish, and of the houses of correction and of impotent and maimed foldiers, as the lord treasurer, chancellor, and chief baron of the exchequer shall order, and one third to him who shall sue in any court of record. If not paid in 3 months after judgment, he shall be imprisoned till he pay, or conform himself to go to church. 23 El. c. 1. f. 5, 11. 29 El. c. 6. f. 7.

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Note; These two last statutes, by inflicting 20 1. for a month's absence, dispense not with the forfeiture of 12 d. on the former fiatutes for the absence of one Sunday; for both may well stand together; and the 12d. is immediately forfeited upon the ab-

sence of each particular day. 1 Haw. 13.

3. And every offender in not repairing to church, being once convicted, shall pay into the exchequer at Easter or Michaelmas term which shall first happen after the conviction, 20%, for every month contained in the indictment; and shall also afterwards, without any other indictment or conviction, pay into the exchequer at every Easter and Michaelmas term 201. for every month till he conform; except where the king may refuse the same, and take two parts of the lands as hereafter is mentioned. 3 J. c. 4.

4. And every conviction recorded, shall by the court be certified into the exchequer, and if default shall be made in any part of payment, the king may by process take the goods, and

two parts of the lands of the offenders. 3 J. c. 4. s. 9.

5. Also the king may refuse the penalty of 20 /. a month for not coming to church, and in lieu thereof may feize two parts of the offender's lands, and keep them till he conform. 3 J. c. 4.

f. 10, 11.

6. And where seizure shall be made of two parts of the lands, for the penalty of 20 l. a month, such two parts shall, according to the extent thereof, go towards payment, but the third part shall not be extended or seized. And when the recusant shall die. and the faid penalty not paid, the king shall keep the two parts, until the whole be thereby, or otherwise, paid. 1 J. c. 4. s. 5.

7. And if such recusant have not lands of 20 marks a year, or goods worth above 40 l. and shall not conform in 3 months, being thereto required by the bishop, or a justice of the peace, or the minister, he shall abjure the realm before two justices of the peace or the coroner; who shall enter the same of record, and

certify the same at the next assizes. 35 El. e. 2. f. 8, 9.

And if he shall refuse to abjure, or not depart, or return, he shall be guilty of felony without benefit of clergy. 35 El. c. z.

f. 10.

But married women shall not be obliged to abjure, but they shall be subject to all the other penalties. 35 El. c. 2. s. 19.

8. And every person who shall retain in his service, or shall relieve, keep, or harbour in his house any servant, sojourner, or stranger, who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10 l. for every month he shall continue in his house such person so forbearing. And the fessions may hear and determine the same. 3 J. c. 4. J. 32, 33, 36.

9. And conveyances made by recufants to evade the penalties for not coming to church, shall be void. 29 El. c. 6. f. 1.

10. And the justices in fessions shall have power to enquire, hear, and determine of all recusants and offences for not repairing to church; and shall have power at the sessions where an indictment is taken for such offence, to make proclamation, by which

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it shall be commanded that the body of the offender shall be rendred to the sheriff, bailiff, or gaoler, before the next sessions: And if he shall not appear of record at the next sessions, then upon such default recorded, he shall stand convicted. 3 J. c. 4. f. 7.

11. And no indictment or other proceeding against recusants shall be reversed (unless they conform) for any want of form, nor by any thing but by direct traverse to the point of not coming to

church. 3 J. c. 4. f. 16.

12. But every person who shall usually on Sundays have in his house divine service as established by law, and be thereat himself usually present, and shall 4 times a year at least go to the parish church or other common church or chapel, he shall not incur any penalty for not repairing to church. 23 El. c. 1. f. 12. And this also shall not extend to protestant distenters, who resort to some place of religious worship allowed by the act of toleration. 1 W.

13. And the churchwardens and constables shall (on pain of 201) present at the quarter sessions once a year, the monthly absence from church of all recusants, and the names and ages of their children above 9 years of age, and the names of their servants. And the presentments shall be entred by the clerk of the peace without see, on pain of 40s. And if the party presented shall be indicted and convicted, such churchwarden or constable shall have a reward of 40s. to be levied of the recusant's goods by warrant of the justices in sessions.

37. c. 4. s. 4, 5, 6.

# XI. Registring estates.

1. Every person being a popish recusant, or papist, or educated in the popish religion, or whose parent or parents shall be a papist or papists, or who shall use or profess the popish religion, shall within 6 months after he shall be of the age of 21, take the oaths of the 1 G. c. 13. and make the declaration against popery of the 30 C. 2. in one of the courts at Westminster, or the quarter sessions; or in default thereof, shall within 6 months afterwards, and within 6 months after he shall come into the possession of any lands, register the same; where they lie; who is the possession of them; what estate he hath in them; the yearly rent, if lett; if lett upon lease, who made it, what rent, what sine; the time when registred; in a parchment book or roll to be kept by the clerk of the peace. 1 G. st. 2. c. 55. st. 1.

2. And fuch lands shall be registred in the county, where the

house thereupon stands. 36. c. 18. s. 3.

3. And his name shall be subscribed to the registry, in the prefence of two justices in open sessions, by himself or his lawful attorney (the warrant of attorney to be proved by two witnesses, and entred of record); and two justices shall subscribe their names as witnesses (on pain of 20 l.) that the entry was duly made. And the clerk of the peace shall, on application made ten days at least before the sessions, enter the same before such sessions; who shall have 3 d. for every 200 words of the registry and entry of record, and for every copy thereof, and for any one comparing the same dred

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record, he fame with with the originals; and 4 d. for every fearch. And if he neglect or refuse to do his duty herein, he shall forfeit his office. I G. ft. 2. c. 55. f. 1.

4. Persons not qualifying, or not registring, or not registring truly, shall forfeit such lands, or the value thereof, two thirds to the king, and one third to him who shall sue for the same at the common law, or in chancery. I G. st. 2. c. 55. st. 1.

5. But no action for any forfeiture for not registring, or for registring fraudulently, shall be brought after two years after the offence committed. 3 G. c. 18. f. 2.

# XII. Inrolling deeds and wills.

1. No manors, lands, tenements, or hereditaments, or any interest therein, or rent or prosit thereout, shall pass, alter, or change from any papist, or person professing the popish religion, by any deed or will, except such deed within 6 months after date, and such will within 6 months after the death of the testator, be inrolled in one of the courts of record at Westminster, or within the county where they lie, by the custos rotulorum, and two justices of the peace, and the clerk of the peace, or two of them at least, whereof the clerk of the peace to be one. 3 G. c. 18. f. 6.

2. But leases made by papists to protestants, whereon the full yearly value, or the ancient or most accustomed yearly rent or more shall be reserved, need not to be inrolled. 10 G. c. 4.

3. And by the 28 G. 2. c. 10. fuch deeds and wills shall be good, if they be inrolled before Jan. 1. 1756, if advantage hath not been taken of the default before Jan. 11. 1755. And there is generally the like clause of indemnity in some act of parliament every two or three years.

4. Also no purchase made for full and valuable consideration, by and for the sole benefit of any protestant, shall be avoided for or by reason that any deed or will, thro' which the title is derived, hath not been involled; so as no advantage was taken thereof before the purchase, and so as no decree or judgment hath been obtained for want of such invollment. 28 G. 2. c. 10.

### XIII. Double taxes.

By the land tax acts, papifts and reputed papifts, being of 18 years of age, who shall not have taken the oaths of allegiance, supremacy, and abjuration, shall pay double land tax.

# XIV. Papists not to come to court.

1. No popish recusant convict shall come into the court or house where the king or his heir apparent shall be (unless commanded by the king or council); on pain of 100 l. half to the king, and half to him who shall discover and sue for the same in any court of record. 3 J. c. 5. s. 2.

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2. And if any member of either house of parliament, not having taken the oaths of allegiance and supremacy, and made and subscribed the declaration against popery, shall come into the king's presence, or the court or house where he is (without licence from fix of the privy council), he shall suffer as a popish recusant convict, and shall be disabled to hold any office, or to vote in either house of parliament, or to be plaintist, guardian, executor, administrator, or to take any legacy or gift, and shall forfeit 500% to him who shall sue. 30 C. 2. st. 2. c. 1.

# XV. Not to come within ten miles of London.

1. All popish recusants who shall come, dwell, or remain, within the city of London, or within ten miles thereof, who shall be indicted or convicted of such recusancy, or who shall forber going to church to hear divine service for 3 months, shall within ten days after such indictment or conviction, depart from the said city, and ten miles compass of the same; and shall also within the said time deliver up their names to the lord mayor, if they dwell within the city or liberties thereof; and if they dwell in any other county, within ten miles of the city, they shall deliver up their names to the next justice; on pain of 100 l. half to the king, and half to him who shall sue. 3 J. c. 5. s. 4.

2. And for the better discovering of papists within ten miles of London, every justice in the neighbouring counties, shall cause to be arrested and brought before him every such person within the said limits, not being a merchant soreigner, as are or are reputed to be papists (except ambassadors servants), and tender to him the declaration against popery of the 30 C. 2. which if he shall result to make and subscribe, and afterwards continue within ten miles of London, he shall suffer as a popish recusant convict. The justice to certify such subscription, or refusal, into the king's bench, or to the next quarter sessions. I W. c. 9.

# XVI. Papists confined to their habitations.

1. Every person above 16 years of age, being a popish recusant, and having any certain place of abode, who being convicted for not repairing to some church, chapel, or usual place of common prayer to hear divine service there, but forbearing the same contrary to law, shall within 40 days next after the conviction (if he be within the realm, and not hindred by imprisonment, by command of the king or council, or by sickness, and in such case in 20 days after the removal of such impediment) repair to his usual dwelling, and shall not remove above five miles from thence, unless he be licensed as is herein after directed, on pain of forseiting his goods, and also to the king his lands during life, unless they be customary or copyhold, and then to the lord of the manor. 35 El. c. 2. f. 3, 5.

And it feemeth that these shall be computed according to the English manner, allowing 1760 yards to a mile, and that the same shall be reckoned not by streight lines, as a bird or arrow

may fly; but according to the nearest and most usual way. I Have.

2. Having repaired to their dwelling, they shall within 20 days notify their coming, and present themselves, and deliver their true names in writing to the minister of the parish and to the constable, and the minister shall enter the same in a book. 35 El. 6.2. 6.6.

3. And, after, the minister and constable shall certify the same in writing to the next sessions; and the clerk of the peace shall enter the same in the rolls of the sessions. 35 El. c. 2. f. 7.

4. But if such person restrained shall be urged by process, or be bound to appear in any of the king's courts, or be sent for by the council, or be bound to render his body to the sheriff on proclamation, he shall incur no penalty for removing for such purpose. 35 El. c. 2. f. 13, 14.

5. Also, popish recusants confined to their habitations by the

35 El. may be licensed to remove,

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(2) By three or more of the privy council, in writing under their hands; who may give licence to such recusant to travel out of the compass of sive miles, for such time as shall be contained in the licence, for their travelling, attending, and returning, and

without any other cause to be expressed in the licence.

(3) If such recusant shall have necessary occasion or business; then, upon licence in writing under the hands and seals of sour of the next justices of the county or place, with the assent in writing of the bishop; or of the lieutenant, or a deputy lieutenant of the county residing therein, under their hands and seals; in which licence shall be specified both the cause of the licence, and the time how long the party licensed shall be absent in travelling, attending, and returning: In such case, the person so licensed may travel about such his necessary business, and for such time as shall be comprised in the licence; he first taking oath before the said sour justices, or any of them, that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stay. And such person departing above sive miles, not having such licence, and not having taken such oath, shall incur the penalty of the 35 El. abovementioned. 3 J. c. 5. f. 7.

# XVII. Not to inberit, or take by devise.

If any person educated in the popish religion, or professing the same, shall not within six months after he shall be 18 years of age, take the oaths of allegiance and supremacy, and subscribes the declaration of the 30 C. 2. in the chancery, king's bench, or quarter sessions, he shall (in respect of himself, but not of his heirs) be incapable to inherit or take any lands, by descent, devise, or limitation; but the next of kin, being a protessant, shall have the same. 11 5 12 W. c. 4. f. 4.

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#### XVIII. Shall not purchase.

1. Every papift, or person making profession of the popish religion, shall be disabled to purchase any lands, or profits out of the same, in his own name, or in the name of any other to his use, or in trust for him; but the same shall be void. 11 & 12 W.

2. But no fale of any lands for a valuable consideration by any person, being the reputed owner, or in possession of the rents and profits thereof, to be made to and for a protestant purchaser, shall be avoided on any pretence of disability in the act of the 11 & 12 W. c. 4. and of the 1 J. c. 4. incurred by any person making such sale, or by or through whom the title shall be derived; unless before such sale, the person intitled to take advantage of such disability, shall have recovered the lands, or given notice of his claim to the purchaser, or entred his claim at the quarter sessions. 3 G. c. 18. f. 4. But the above statute of the 11 & 12 W. shall continue, that papists shall not purchase. f. 5.

# XIX. Shall not present to benefices.

1. A popish recusant convict shall be disabled to present, or grant any avoidance, to any ecclesiastical living, or nominate to any free school, hospital, or donative. 3 J. c. 5. s. 18.

2. And whereas by the 1 W. c. 15. any two justices who shall know or suspect or shall be informed, that any person is, or is suspected to be a papist, shall tender to him the declaration of the 30 C. 2. and if he shall not appear before the said justices, on notice to him given by warrant of the said justices, or left at his usual place of abode, or if he shall refuse to make and subscribe the declaration, they shall certify his name and place of abode at the next sessions to be there recorded by the clerk of the peace; It is enacted by the 1 W. c. 26. s. 2. that every person so recorded, shall from the time of such record, be disabled to present or nominate to any benefice, free school, hospital, or donative, as fully as if he were a popish recusant convict.

3. And where any person shall be possessed of any right of presentation or nomination as aforesaid, in trust for any papist or popish recusant, who shall be convicted or disabled by the 3 J. c. 5. or by the 1 W. c. 26. such trustee shall be disabled to present or nominate, or to grant any avoidance thereof. 1 W. c. 26.

4. Also, it is further enacted, that every papist, or person making profession of the popish religion (that is, whether convicted by either of the former acts or not) and every child not being a protestant, under the age of 21, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted, directly or indirectly, by or for any such papist or person professing the popish religion, or such child as aforesaid, whether such trust be declared by writing or not, shall be disabled to present or nominate. 12 An. st. 2. c. 14. f. 1.

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5. And the chancellor and scholars of the university of Oxford shall present and nominate to the same, in the counties of Oxford, Kent, Middlesex, Sussex, Surrey, Hampsbire, Berksbire, Bucking-bamsbire, Gloucestersbire, Worcestersbire, Staffordsbire, Warwicksbire, Wiltsbire, Somersetsbire, Devonsbire, Cornwall, Dorsetsbire, Herefordsbire, Northamptonsbire, Pembrokesbire, Caermarthensbire, Brecknocksbire, Monmouthsbire, Cardigansbire, Montgomerysbire, the city of London, and other cities and towns within the said counties:

And the chancellor and scholars of the university of Cambridge shall present and nominate in the counties of Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Huntingtonshire, Susfolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshiye, Shropshire, Cheshire, Lancashire, Yorkshire, Durham, Northumberland, Cumberland, Westmorland, Radnorshire, Denbighshire, Flintshire, Carnarwonshire, Angleseyshire, Merionethshire, Glamorganshire, and the cities and towns within the said counties. 3 J. c. 5. s. 19, 20.

6. And if any trustee, mortgagee, or grantee of an avoidance, shall present or nominate to any such living, free school, or hospital, whereof the trust shall be for any recusant convict or disabled, without giving notice in writing to the university, in three months after the avoidance shall happen; he shall forfeit 500 l. to the university. 1 W. c. 26. f. 4.

7. But the chancellors and scholars shall not present to any such ecclesiastical living, any person who shall then have any other benefice with cure of souls; nor shall the person presented be absent from the same above 60 days in any one year. 1 W. c. 26. 5.5.6.

8. And every grant of an ecclefiaftical living, school, hospital, or donative, by any papist or trustee for him, shall be void, unless made bona side for a full and valuable consideration to a protestant purchaser. And also every devise thereof, with intent to secure the benefit thereof to the heirs or family of such papist, shall be void. 11 G. 2. c. 17. s. 5.

#### XX. Shall not teach school.

If any papist shall keep school, or take upon him the education, or government, or boarding of youth; he shall be adjudged to perpetual imprisonment. 11 & 12 W. c. 4. f. 3, 5.

# XXI. Disabled as to offices, law, physick.

1. No recusant convict shall practise the common law, as a counsellor, clerk, attorney, or solicitor; nor shall practise the civil law, as advocate or proctor; nor practise physick, nor be an apothecary; nor shall be a judge, minister, clerk, or steward of or in any court, or keep any court, nor shall be register or town clerk, or other minister or officer in any court; nor shall bear any office or charge, as captain, lieutenant, corporal, serjeant, ancient bearer, or other office in camp, troop, band, or company of Volume 11.

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14. J. 1. 5. And foldiers; nor shall be captain, master, governor, or bear any office of charge of or in any ship, castle, or fortress; but be utterly disabled for the same: and every person offending herein, shall forfeit 100 l. half to the king, and half to him who shall sue, 3 J. c. 5. s. 8.

2. And no popish recusant convict, nor any having a wife being a recusant convict, shall exercise any publick office, unless such husband, and his children above 9 years old, and his servants,

go to church and conform. 3 J. c. 5. f. 9.

# XXII. Not to be executor or administrator.

A popish recusant convict shall be disabled to be executor or administrator. 3 J. c. 5. s. 22.

# XXIII. Not to be guardian.

A popish recusant convict shall not have the custody of any child as guardian: but the wardship shall go to the next of kin not being a recusant, to whom the estate cannot lawfully descend, 3 J. c. 5. f. 22, 23.

# XXIV. Shall be deemed excommunicate.

1. Every popish recusant convict shall stand and be reputed to all intents and purposes disabled, as a person excommunicated, and as if he had been so denounced by the laws of the realm.

3 J. c. 5. f. 11.

2. And on process to the sheriff, for apprehending a popish recusant excommunicated, he may break open a house, or raise the

power of the county. 3 f. c. 4. s. 35.

# XXV. Popish baptism.

Every popish recusant shall within one month next after the birth of any child, cause it to be baptized by a lawful minister in open church; or if it is infirm, to be baptized by a lawful minister; on pain of 100%. one third to the king, one third to him who shall sue, and one third to the poor. 3 F. c. 5. f. 14.

#### XXVI. Popish marriage.

1. Every man, being a popish recusant convict, who shall be married otherwise than in some open church or chapel, and otherwise than according to the orders of the church of England, by a minister lawfully authorized, shall be utterly disabled and excluded to have any estate of freehold into the lands of his wise, as tenant by the courtesy of England: And if she have no lands, he shall surfeit 100 l. half to the king, and half to him who shall suc. 3 J. c. 5. s. 1.13.

2. And every woman, being a popish recusant convict, who shall be married in other form than as aforesaid, shall be utterly excluded

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who atterly cluded excluded and disabled, not only to claim any dower or jointure, but also her widow's estate and frankbank in her husband's customary lands, and be disabled to have any part of his goods. 3 %.

5. 5. 13.

3. But by the 26 G. 2. c. 33. After March 25. 1754, if they shall be married any where in England, other than in a church or publick chapel (unless by special licence from the archbishop of Canterbury), or without publication of banns, or licence, the marriage shall be null and void.

# XXVII. Popish burial.

If any popish recusant, not being excommunicate, shall be buried in any place, other than the church or churchyard, or not according to the ecclesiastical laws; the executors or administrators of every such person so buried, shall forseit 201. one third to the king, one third to the informer or him who shall sue, and one third to the poor. 3 J. c. 5. s. 15.

#### XXVIII. Armour.

1. Any two justices, who shall know or suspect, or shall be informed, that any person is or is suspected to be a papist, may and shall tender to him the declaration in the act of the 30 C. 2. and if he shall not appear, after notice by warrant under hand and feal given to him, or left at his usual place of abode; or shall not make and subscribe the declaration; he shall be disabled to have or keep in his house or elsewhere, or in the possession of any other to his use, any arms, gunpowder or ammunition, except such weapons as shall be allowed by the sessions for the defence of his house or person. And any two justices may by warrant authorize in the day time any person, with the constable's assistance, to search fuch person's house for the same, and seize them for the use of the king. And the faid justices snall deliver the same in open court at the next sessions for the use aforesaid; where also, they shall certify the name and place of abode of every person so subscribing, or not subscribing. 1 W. c. 15. f. 2, 3, 4.

2. And notwithstanding the taking away such armour, gun-powder, and munition, the said popish recusant shall be charged with the providing and maintaining of horse, and other armour, and munition, as other subjects, according to their several abilities.

3 J. c. 5. s. 29.

3. And every such person, not discovering and delivering them up to some justice in ten days after default in not appearing, or not subscribing as aforesaid, or hindring the seizure, shall be committed to gaol by any two justices for three months, and shall forseit the arms, and pay treble value of them to the king, to be appraised by the justices at the next sessions. 1 W. c. 15. s.

4. And every other person who shall conceal, or knowing thereof, not discover to a justice such arms or ammunition, or shall hinder the seizing thereof, shall be committed to gaol by two

justices for three months, and shall forfeit to the king the treble

value of the arms. 1 W. c. 15. f. 6.

5. And every person who shall discover such arms or ammunition, so as they shall be seized, shall have a reward equal to the value thereof ordered by the sessions out of the goods of the offender, to be levied by distress. 1 W. c. 15. f. 7.

# XXIX. Horfes.

1. Every papift making default in not appearing, or not subscribing (as in the former section concerning armour), shall not have or keep in his possession, or in the possession of any other to his use, or at his disposition, any horse above the value of 5 l. to be fold. And two justices may authorize any person, with the constable's assistance, to seize all such horses for the king's use.

1 W. c. 15. f 9.

2. And if any person shall conceal, or affist in concealing, any such horse, he shall be committed by warrant of two justices to prison for three months, and shall forfeit to the king treble the

value of fuch horse. 1 W. c. 15. f. 10.

# XXX. Popish wife.

1. If any married woman, being a popish recusant convict, shall not conform in three months, she shall be committed to prison, by one of the privy council, or by the bishop, if she be a baroness; or, if under that degree, by two justices (1 2.) until she shall conform, unless her husband shall pay to the king for her offence for every month 101. or else the third part of his lands, so long as she shall continue out of prison. 7 J. c. 6. f. 28.

2. A wife being a popish recusant convict, her husband not being so, shall forfeit to the king two parts of her jointure and dower, shall not be executrix or administratrix of her husband, nor shall have any share of his goods and chattels. 3 J. 6.5.

f. 10.

3. But if the hath been married (out of England) otherwise than according to the form of the church of England, the shall be disabled to claim any dower or jointure, or widow's estate, of her husband's lands; and shall have no part of his goods. 3 J. c. 5. J. 13. And if in England, the marriage shall be void. 26 G. 2. c. 33.

# XXXI. Heir of a popish recusant.

If the heir of a popish recusant shall be under 16, at the death of such recusant, and shall after such age become recusant, he shall be charged with the penalties happening him by reason of such his ancestor's recusancy, until such time as he shall conform. 7 J. c. 4. J. 3, 4.

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### XXXII. Protestant children of papists.

If any popish parent, in order to the compelling his child being a protestant to change his religion, shall refuse to allow him a fitting maintenance, the lord chancellor may make order therein. 11 & 12 W. c. 4. f. 7.

#### XXXIII. Oaths.

1. By the toleration act, if any person being required by a justice of the peace, shall refuse to take the oaths of allegiance and supremacy, and to make and subscribe the declaration against popery of the 30 C. 2. he shall be committed by the said justice to prison; and, at the next sessions, if he shall again resuse to make and subscribe the said declaration, he shall be deemed and suffer as a popish recusant convict. S. 12.

2. And by the 1 G. ft. 2. c. 13. Two justices may summon any person whom they shall suspect to be disaffected, by writing under their hands and seals to appear before them at a time prefixed, to take the oaths of allegiance, supremacy, and abjuration: which summons shall be served on such person, or left at his dwelling house, or usual place of abode, with one of the samily there; and if such person shall neglect or refuse to appear, then, on due proof made upon oath of serving the said summons, they shall certify the same to the next sessions, to be there recorded: And if such person shall neglect or resuse to appear and take the oaths at the said sessions (his name being publickly read at the first meeting of the said sessions), he shall be taken and adjudged a popish recusant convict. And the same shall be from thence certified by the clerk of the peace, into the chancery, or king's bench, to be there recorded. f. 10, 11.

### XXXIV. Minister to present papists.

Ministers shall present popish recusants to the bishop, every year before June 24. Can. 114.

### XXXV. Recufants conforming.

1. A recusant conforming shall be discharged of the penalties which he might otherwise suitain in respect of his recusancy. 1 J. 6.4. s. 2.

2. And by the 11 G. 2. c. 17. Papits conforming to the protestant religion, and taking the oaths, and subscribing the declaration of the 30 C. 2 in the chancery, king's bench, or quarter sessions, (to be there recorded,) shall have their estates freed of the disabilities incurred before such conforming. f. 1, 2, 3, 4.

3. And a recusant convicted having conformed, shall at least once a year receive the facrament in the parish church, on pain of forseiting for the first year 20 l. for the second 40 l. and for every year after 60 l. half to the king, and half to him who shall sue in

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the courts at Westminster, or at the assizes, or sessions. 3 J. c. 4.

And at the fessions where an indictment for such offence is taken, the justices shall have power to make proclamation, by which it shall be commanded that the body of the offender shall be rendred to the sheriff, bailiss, or gaoler, before the next sessions; And if he shall not appear of record next sessions, then upon such default recorded, he shall stand convicted. f. 7.

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And no indictment or other proceeding shall be reversed for want of form, nor by any thing but by direct traverse to the point of not receiving the sacrament. s. 16.

But the husband shall not be charged with a penalty for the wife's offence in not receiving the facrament; nor shall the wife be chargeable for not receiving during her marriage. f. 40.

### XXXVI. Ecclesiastical jurisdiction.

It is generally provided in the foregoing acts, that nothing therein shall take away or abridge the authority or jurisdiction of ecclesiatical censures.

Note; The oaths and declarations abovementioned, are inferted at large in the title Daths.

Poste comitatus. See Arrest.

## post.

Postmaster's

O person shall be capable of exercising any employment relating to the post office, or any branch thereof, or be any way concerned in receiving, forting, or delivering of letters, before he shall have taken the following oath, before a justice of the peace where he resides:

IA. B. do swear, that I will not wittingly, willingly, or knowingly open, detain, or delay any letter or letters, packet or packets, which shall come into my hands, power, or custody, by reason of my employment in or relating to the post office; except by the consent of the person or persons to whom the same is or shall be directed, or by an express warrant in writing under the hand of one of the principal secretaries of state for that purpose; or except in such cases, where the party or parties to whom such letter or letters, packet or packets shall be directed, or who is or are chargeable with the payment of the port or ports thereof, shall resuse or neglect to pay the same, and except such letters or packets, as shall be returned for want of true directions, or when the party or parties to whom the same is or shall be directed, cannot be found: And that I will not any way imbezil any

any fach letter or letters, packet or packets, as aforefaid. 9 An. c. 10. f. 41.

And if any person shall do any thing contrary to the said oath,

he shall forfeit 20 1. and his office. f. 40.

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2. And persons appointed to measure the post roads, shall be Measurer's oath. sworn to perform the same, according to the best of their skill and judgment, before a justice of the peace, who shall make a certificate thereof in writing, to be entred in the general post office, without fee. J. 12.

3. All fums not exceeding 5 l. that shall be due from any per. Money for postfon for letters, or which shall be received for the carriage of letters without answering the same to the receiver general, shall be
recovered before justices of the peace in the same manner as small
tithes: And such debt shall be preferable in payment before any
debt to any private person. f. 30.

And the rates or prices for the carriage of letters shall be ac-

cording to the feveral rates and fums following:

For every fingle letter not above 80 miles from the general post office, 3 d. Above 80 miles, 4 d. And for every letter directed on board, or from on board any ship, 1 d. more.

Within the limits of the penny post, 1 d. (at putting in, and

1 d. at delivery, 4 G. 2. c. 33.)

From Edinburgh, Dumfries, Dublin; to London, 6d.

From France, Holland, Hamburgh, 10 d.

From Italy, Sicily, Germany, Switzerland, Denmark, Sweden, and all parts of the North (thro' Holland); and from New York,

From Italy, Sicily, Turkey; through France, 1 s. 3 d.

From Spain, Portugal, Jamaica, Barbadoes, Antegoa, Montferrat, Nevis, St. Christophers, 1 s. 6 d.

And a double letter shall pay double, and an ounce shall pay

four times the price of a fingle letter. 9 An. c. 10. s. 6.

And bills of exchange wrote on the same piece of paper with a letter, and several letters to several persons wrote on the same piece of paper, shall pay as so many distinct letters. 6 G. c. 21. f. 51.

And writs or other proceedings at law, inclosed, or writ on the fame piece of paper with a letter, shall pay as so many distinct let-

ers. 26 G. 2. c. 13. f. 6.

But merchants accounts not exceeding one sheet, bills of exchange, invoices, bills of lading (sent or brought over sea, 6 G. c. 21. f. 52.) shall be allowed without rate in the price of the letters. 9 An. c. 10. f. 13.

But patterns or famples of goods, or pieces of any thing, tho' not paper, inclosed in a letter, or affixed thereto, if under an ounce weight, shall pay as a double letter. 26 G. 2. c. 13.

J. 7.

4. And none but the postmaster shall carry letters; on pain of None but the 51. for every offence, and 1001. a week besides; half to the postmaster to king, and half (with costs) to him that shall sue in any court of carry letters. record. 9 An. c. 10. s. 17, 19.

Y 4

Except

### Braemunire.

Except letters carried gratis by carriers or ship masters with goods, instruments out of any court, and letters fent by friends in their journey, or by a special messenger. 9 An. c. 10. s. 2.

> Pound-breach. See Distress. Douder (for the hair). See Ercife.

## Praemunire.

What it is.

RAE MUNIRE is so called from a word in the writ, Præmunire facias præfatum A. B. quod tune sit coram nobis, &c. where præmunire is used for præmonere, to warn the person to appear, as is directed in the statute of the 27 Ed. 3. c. 1. hereafter following. 1 Inft. 129.

Power of justices of the peace therein.

2. Notwithstanding that pramutire is not within the letter of the commission of the peace, yet inasmuch as it is against the peace of the king and of the realm, any justice of the peace may, either on his own knowledge, or the complaint of others, cause any person to be apprehended for such offence; and he may take the examination of the person so apprehended, and the information of all who can give material evidence against him, and put the same in writing; and bind over the witnesses to the king's bench or gaol delivery; and certify his proceedings to the fame court to which he shall bind over fuch informers. 2 Haw. 39. Hale's Pl. 168.

Impeaching king's courts, a præmunire.

3. By the 27 Ed. 3. c. 1. called the statute of Provisors, They judgments in the who shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do fue in any other court, to defeat or impeath the judgments given in the king's court, shall have a day, containing the space of two months, by warning to be made to them, by the sheriffs or other officers, to appear to answer in their proper persons for the contempt: And if they come not at the faid day in their proper person to be at the law, they, their procurators, attornies, executors, notaries, and maintainers, shall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies wherefoever they may be found shall be taken and imprisoned, and ransomed at the king's will. And upon the same a writ shall be made, to take them by their bodies, and to seize their goods, lands, and possessions, into the king's hands. And if it be returned, that they be not found, they shall be put in exigent, and outlawed.

Suing out foreign process, a præmunire.

4. And by the 16 R. 2. c. 5. commonly called the statute of præmunire, and to which the feveral subsequent statutes do refer; both those who pursue, or cause to be pursued, in the court of Rome, or elsewhere, any processes or instruments, or other things

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whatfoever which touch the king, against him, his crown and regelity, or his realm; and also those who shall bring, receive, notify, or execute them; and their fautors and abettors, shall be out of the king's protection; and their lands and tenements, goods and chattels, forfeit to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or process shall be made against them by pramunire facias, in manner as it is ordained in other statutes of provisors.

And in these two statutes, as above recited, are contained the

pains and ponalties of what is called a præmunire.

5. And fince these acts it hath been adjudged, that a fuit in the Suing for temecclesiastical court (as for debt) was in case of præmunire. And poral matters in that a person suing in the ecclesiastical court, for the forgery of a the spiritual court, a præmuwill, doth incur the danger of a præmunire; because the party nire. grieved might have his remedy by the common law. Alfo judgment against the defendant was given in a præmunire, for suing for tithes in the ecclefiaftical court, alledging the fame to be fevered from the nine parts. 3 Inft. 120, 121. But it feemeth, that a fuit in that court, for a matter which appears not by the libel it felf, but only by the defendant's plea, or other matter subsequent, to be of temporal cognizance, is not within the statute; because it appears not that either the plaintiff or judge knew it to be fo. 1 Haw. 51, 52.

6. By the 25 H. 8. c. 20. Refusing to elect or consecrate the Refusing to elect person nominated by the king to a bishoprick, is made a pra- or consecrate a munire.

bishop.

7. By the 26 H. S. c. 14. No suffragan shall exercise any ju-Suffragans exrisdiction, otherwise than by the bishop's commission, on pain of a ceeding their

8. To delay a fuit, on the statute of monopolies, 21 J. c. 3. Delaying a suit shall be a præmunire. s. 12.

on the statute of monorolies. without the

9. By the 13 C. 2. c. 1. To affirm maliciously or advisedly, Affirming that by speaking or writing, that both or either houses of parlia- the parliament ment have a legislative power without the king, is a pra- can make laws munite.

out of the realm.

10. By the 31 C. 2. c. 2. No subject shall be fent a prisoner Sending prisoners out of the realm, on pain of a præmunire.

11. By the 6 An. c. 7. If any person shall maliciously and di-Affirming that rectly by preaching, teaching, or advised speaking affirm, that the pretender the pretender hath any right to the crown, or any other person hath any right to otherwise than as by the acts of parliament, he shall incur a præ the crown.

12. The offences above specified are such as do not fall in with Other præmuthe other titles of this book. Other offences incurring a præmu-nires. nire, are inferted under the titles to which they do more properly belong; as in the titles, Oaths, Gunpowder; and especially in the title Popery, under which there are many offences of this kind, occasioned by the papal incroachments from time to time in this

13. The judgment in præmunire is, that the defendant shall be Judgment in from theneeforth out of the king's protection, and his lands and tene- præmunire.

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## Praemunire.

ments, goods and chattels forfeited to the king, and that his budy shall remain in prison at the king's pleasure. I Inst. 129.

Out of the king's protection] So odious was this offence formerly, that a man who was attainted of the fame, might have been flain by any one without danger of law: because it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy: and therefore by the 5 El. c. 1. it is enacted, that it shall not be lawful for any one to slay any person attainted in or upon a præmunire. I Inst. 130.

But he is so far out of the king's protection, that he is d'sabled to bring an action for any injury whatsoever. And no one, knowing him guilty, can with safety give him aid, comfort, or relief.

1 Inft. 129, 130. 1 Haw. 55.

And Mr. Hawkins fays it has been questioned, whether he hath a right to demand surety of the peace. But Lambard and Dalton, which are the authorities he cites for it, do incline to think that he hath such right. Lambard alledges for it the statute of the 5 El. abovementioned; and Dalton afferts it without doubting. Lamb. 80. Dalt. 272. 1 Haw. 126.

Lands and tenements — forfeited] Yet tenant in tail shall only forfeit lands during life: for albeit the statute of the 16 R. 2. c. 5. enacteth, that lands and tenements shall be forfeited, that must be understood of such an estate as he may lawfully forfeit, and that is, during his own life. 1 Inst. 130.

14. Attainder in præmunire worketh no corruption of blood,

1 Inft. 391.

Corruption of blood.

# Pzelentment.

A Presentment is that which the grand jury find and present to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment.

There are other presentments of churchwardens, constables, surveyors of the highways, and justices of the peace; all which

may be feen under their proper titles.

Pzison and pzisoner. See Gaol.

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## Prison-breaking.

T feemeth that at the common law all prison breaches were felonies, if the party were lawfully in custody for any cause whatsoever. 2 Haw. 123.

But by the following statute, which is called the statute de frangentibus prisonam, the severity of the common law is moderated; in the explication of which statute, will be contained the whole

learning relating to this subject.

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The statute is this: Concerning prisoners which break prison, the king willeth and commandeth, that none that breaketh prison shall have judgment of life or member, for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convist thereupon, according to the law and custom of the realm. I Ed. 2. st. 2.

Concerning prisoners which break] Therefore if the prison be broken by a stranger, and not by the prisoner, or by his procurement, this is no selony in the prisoner. Hale's Pl. 108.

Which break prison] It feems clear, that any place whatsoever, wherein a person under a lawful arrest for a supposed crime, is restrained of his liberty, whether in the stocks, or street, or in the common gaol, or the house of a constable, or private person, is properly a prison within this statute; for imprisonment is nothing else but a restraint of liberty. 2 Haw. 124.

And therefore this extendeth as well to a prison in law, as to a

prison in deed. 2 Inft. 589.

But there must be an actual breaking; for if the door be open and he goes out, it is not felony, but a misdemeanor only. 2 Inst. 589. 2 Haw. 125.

But if the prison be fired without the privity of the prisoner,

he may lawfully break it to fave his life. Hale's Pl. 108.

Also it seems that no breach of prison will amount to felony, unless the prisoner escape. 2 Harv. 125.

That none that breaketh prison shall have judgment of life or member] That is, shall be guilty of felony. But nevertheless he is still punishable as for a high misprison, by fine and imprisonment; for i cannot be thought the meaning of the statute, in ordaining that such offences shall not be punished as capital ones, to intend, that they shall not be punished at all. 2 Haw. 128.

Nevertheless, by the 3 Ed. 1. c. 15. Those who have broken prison are not bailable by justices of the peace; and that for two reasons: 1. Because it carries a presumption of guilt. And, 2. Because it is a superadded offence to the former for which they

flood committed. 2 H. H. 133.

Except the cause for which he was taken and imprisoned, did require such judgment] This is to be intended of a lawful cause; and therefore false imprisonment is not within this act. 2 Inst. 590.

1

Imprison-

## Pzison=bzeaking.

Imprisonment is a restraint of a man's liberty under the custody of another, by lawful warrant, in deed, or in law. Lawful warrant is, either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a selony is done, and the offender by a lawful mittimus is committed to gaol for the same: But between these two cases there is a great diversity; for in the first case, whether any selony were committed or no, if the offender be taken by force of a capias, the warrant is lawful, and if he break prison it is selony, altho' no selony were committed; but in the other case, if no selony be done at all, and yet he is committed to prison for a supposed selony, and break prison, this is no selony, for there is no cause. 2 Inst. 590.

So that the cause must be just, and not seigned, for things feigned require no judgment: Thus if a man give another a mortal wound, for which he is committed to prison, and breaketh prison, and the other dieth of the wound within the year, this death hath relation to the stroke; but because relations are but sictions in law, and sictions are not here intended, this prison-

breaking is not felony. 2 Inft. 591.

So that the offence for which the party was imprisoned, must be a capital one at the time of the offence, and not become such

by a matter subsequent. 2 Haw. 126.

And the cause must be expressed in the mittimus, altho' not so certainly as in an indicament, yet with such convenient certainty as it may appear judicially that the offence requires such such ment; as, not for felony generally, but for felony in stealing such

a horse, and the like. 2 Inst. 591.

But if the offence for which the party is committed, be supposed in the mittimus to be of such a nature as requires a capital judgment, yet if in the event it be found to be of an inferior nature, and not to require such a judgment, it seems difficult to maintain, that the breaking of the prison or a commitment for it can be selony; for the words of the statute are, except the cause for which be was taken and imprisoned did require such judgment; and here it appears, that the offence, which is the cause of his imprisonment, doth not require such a judgment. 2 Haw. 126.

But if a man be committed by lawful warrant, for fulpicion of felony done, if he break prison, he may be indicted for that escape, albeit the commitment be for suspicion of felony, and yet no judgment can be given against him for suspicion, but for the

felony it felf, whereof he is suspected. 2 Inft. 592.

And an indictment that fuch a person feloniously broke the prison generally, is not good; but it ought to rehearse the specialty of the matter, that he being imprisoned for such or such a selony,

broke the prison. 2 Inft. 591.

But if the party be only arrested for, and in his mittimus charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by felt defence or by misadventure, and the offence be in truth no greater than the mittimus doth suppose it to be, it is clear, from the express words of the statute, that a breaking of the prison cannot amount to felony, 2 Haw. 125.

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# Prison-breaking.

But if a felony be made by a subsequent statute, and an offender is committed thereupon; if he breaks prison, it is felony. For since all breaches of prison were felonies by the common law, which is restrained by this statute in respect only of imprisonment for offences not capital; when an offence becomes capital, it is as much out of the benefit of the statute, as if it had always been so. Ha. Pl. 108. 2 Haw. 126.

Also it is said, that the party may be arraigned for prison-breaking, before he be convicted of the crime for which he was imprisoned; for that it is not material whether he were guilty of such crime or not; for the words of the statute are, for which he

was taken and imprisoned. 2 Haw. 127

But if he is first indicted and acquitted of the principal felony, he shall not be indicted for the breach of prison afterwards; for it being cleared that he was not guilty of the felony, he is in law as a person never committed for felony, and so his breach of pri-

fon is no felony. 1 H. H. 612.

But the gaoler shall not be punished as a felon for the party's breach of prison, unless he voluntarily consented to it; but it seems to be a negligent escape in the gaoler, for which he may be punished by fine and imprisonment, because there wanted either that due strength in the gaol, or that due vigilance in the gaoler or his officers, that should have prevented it: and if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. 1 H. H. 601.

And therefore if a criminal endeavouring to break the gaol, affault his gaoler, he may be lawfully killed by him in the affray.

1 Haw. 71.

Indictment for prison-breaking, by escaping from a constable.

HE jurors for our lord the king upon their oath present, that A. C. late of - yeoman, constable of our said - within the town and constablewick aforesaid, in the county aforesaid, did take and arrest one A.O. late oflabourer, on suspicion of having committed a certain felony, in felonioully taking and carrying away one black gelding, the property of of the value of - and thereupon he the said A. O. under the custody of him the said A.C. the constable aforesaid, was brought before J. P. esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and he the Said J. P. by his warrant directed to the said A. C. and others, did command the Said A. C. to carry and convey the Said A. O. to the gaol of our said lord the king at --- in the county aforesaid, there to be Jafely kept, until he should be lawfully delivered from thence; by

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## Process.

wirtue of which said warrant, he the said A. O. was taken and detained by him the said A. C. and as he the said A. C. was conveying and carrying him the said A. O. to the gaol aforesaid, afterwards, to wit, on the \_\_\_\_\_\_ day of \_\_\_\_\_ in the year aforesaid, he the said A. O. at \_\_\_\_\_ aforesaid in the county aforesaid, with force and arms, did feloniously break away and escape from and out of the custody of him the said A. C. the constable oforesaid, against the will of him the said A. C. and against the peace of our said lord the king, his crown and dignity.

### Indictment for breaking out of gaol.

THE jurors for our lord the king upon their oath present, that A.O. late of —— in the county aforesaid, labourer, on the —— day of —— in the —— year of the reign of —— at —— aforesaid in the county aforesaid, was arrested, imprisoned, and detained, in the gaol of our said lord the king, for a certain felony by him committed, that is to say, for the felonicus taking and carrying away one black gelding, the property of —— of the value of —— and that he the said A.O. on the —— day of —— in the year aforesaid, with force and arms, the aforesaid gaol of our said lord the king at —— aforesaid in the county aforesaid felonicusly did break, and thereby did escape from and out of the said gaol, against the peace of our said lord the king, his crown and dignity.

### Pzivileged place. See Rescue.

## Process.

Process by the commission.

1. BY the commission of the peace, the justices in sessions have power to make and continue processes upon indisments, against the persons indicated, until they can be taken, surrender themselves, or be outlawed.

Process or in2. And by the statute of the 1 Ed. 4. c. 2. Indistments and distances taken presentments taken in the sheriff's tourn, shall be delivered to the in the tourn. next sessions, who may award process thereupon, in like form as

Process by juflices out of sessions. if they had been taken before themselves.

3. And the law also in several cases in express words directs process to be made by justices out of sessions; and in other cases by necessary implication: as where a statute doth give power to justices out of sessions to inquire, hear, and determine, there they may make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine: and this may be either before or after presentment or indistment as the several statutes do require: Before presentment or indistment it is called a swarrant; after presentment or indistment it is properly called process.

Dalt: c. 193.

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4. Commonly an indictment, being but an accufation against a Process, what, man, is of no force but only to put him to answer unto it. And hereof all process hath the name, because it proceedeth or goeth out upon former matter either original or judicial. Lamb. 519. No need of pro-

5. And it feemeth plain, from the nature of the thing, that cefs, if the party there can be no need of process, where the defendant is present in is present.

court, but only where he is absent. 2 Haw. 281.

6. The process ought to be in the name of the king. And if To be in the it issue from the king's bench, it ought to be under the teste of king's name. the chief justice; and if it issue from any other court, there seems to be the fame reason, that it ought to be under the teste of the first in the commission. 2 Haw. 283.

7. Upon an indictment in sessions, there must be 15 days be- When returntween the teste and return of the venire, but if the entry be by able. consent of parties, the venire may be returnable immediate, and

the trial be the same day. 3 Salk, 371.

8. Process on an indictment or appeal of death, is one capias, Process for feand then an exigent: But in case of any other felony, then by lony. the 25 Ed. 3. c. 14. two capias's, and then an exigent. Hal.

Pl. 209. 2 Haw. 303. Crown Circ. 21.

9. The ordinary processes upon all indictments of trespass against Process under the peace, or of other offences against penal statutes, not being felony, or a greater offence, are as follows; First, if the offender be absent, a venire facias, which is but in nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. 2 Haw. 283.

If it appear by the return to fuch venire, that the party hath lands in the county, whereby he may be distrained, the distress infinite shall be awarded from time to time, till he do appear; and by force hereof he shall forfeit on every default so much as the theriff shall return upon him in issues. But if a nihil be returned on such a venire, then three capias's, that is a capias, alias, and pluries shall issue. 2 Hazv. 283.

Where the inhabitants of a parish are indicted or presented, the process is first a venire, then a distringus. Crown Circ. 21.

10. By the 21 J. c. 4. by which all popular actions on penal Process on iaflatutes are restrained to their proper counties, the like process in formations. every popular action, bill, plaint, fuit, or information, on a penal statute, before the quarter sessions (or higher courts) shall be awarded as in an action of trespass vi & armis at the common

And confequently, the process in all such suits must be by attachment or pone per vadios, and after by distress infinite, where by the return the party appears to be sufficient, otherwise by capias. 2 Haw. 284.

11. If a defendant appear to an indictment of felony, and af- Process on anterwards before issue joined make an escape, either from his bail, escape. or from prison; the common capias, alias, and pluries shall be awarded against him, unless there had been an exigent before, in which case a new exigent shall be awarded. 2 Haw. 285.

12. The exigent shall not be awarded against accessaries, until Process against the principal shall be attainted. 3 Ed. 1. c. 14. 2 Haw. 306. accessaries.

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Process into a foreign county.

13. By the 8 H. 6. c. 10. On indicaments for treason, felon, or trespals, against persons dwelling in other counties than where the indiament is taken, before any exigent awarded, presently after the first writ of capias awarded and returned, another writ of capias shall be awarded, directed to the sheriff of the county whereof the person indicted was supposed to be conversant by the same indict. ment, returnable before the same justices or others before whom be is indicted, at a certain day, containing the space of 3 months from the date of the faid last writ, where the counties are bolden from month to month; and where they are holden from 6 weeks to 6 weeks, be shall bave 4 months, until the return of the same writ: by which writ of second capias it shall be commanded to the same sheriff to take the person indicted by his body, if he can be found within his bailiwick, and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted shall appear before the faid justices or others, in the county, liberty, or franchife where be is indicted, at the day contained in the faid last writ of capias, to answer to the king of the felony, treason, or trespass, whereof he is so indicted: After which second writ of capias so served and returned, if he which is so indict d come not at the day of the same writ of capias returned, the exigent shall be awarded. And every exigent and outlawry otherwise awarded or pronounced shall be woid.

And if any such indictment shall be removed by certiorari, then before the exigent awarded, presently ofter such first capias returned, another writ of capias shall be directed as before, returnable

before the king in his bench.

But this shall not extend to indictments taken in the county of

Chefter.

Also if any person be indicated of felony or treason, and at the time of the same selony or treason supposed was conversant within the county whereof the indicatent maketh mention, the like process shall be made against the person so indicated, as bath formerly been used; that is, without sending process into the other county.

But every person indicted in the form aforesaid, after he is duly acquit by verdict, shall bave an action upon his case, against the procurer of such indictment; and if such procurer he attainted thereof, the plaintiff shall recover treble damages. Which seemeth to be upon account of the distance at which he is supposed to live, from the place where he is indicted, and consequently his extraordinary trouble in that behalf.

Dwelling in other counties] If the defendant be named of B. and late of C. there is no need of any capias to the sheriff of the county where C. lies, because it appears that the defendant is at present conversant at B. But if a defendant be named of no certain place at present, but only late of B. and late of C. and late of D. being all of them in counties different from that wherein the prosecution is commenced, a capias shall go to the sheriff of every one of those counties. 2 Haw. 306.

Shall be woid ] Not utterly void, but only voidable by writ of error. 2 Haw. 306.

County of Chefter] But it may be awarded into the counties palatine of Lancaster and Durham; and it seems that it shall be directed to, and returned by the chancellor of Lancaster, or bishop of Durham: And it hath been said, that if he will not return it, the exigent may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel him to return it, and the profecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. 2 Haw. 305. Hal. Pl. 209, 210.

Mr. Marrow faith, that by the equity of this flatute, if a person indicted in one county is imprisoned in another, the justices may award an babeas corpus to remove him before themselves.

Lamb. 526.

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14. Concerning the execution of the process, it is laid down To be executed as a general rule, that where ever the king is a party to the fuit by the fheriff. (as he certainly is to all informations and indictments), the process ought to be executed by the sheriff himself, and not by the bailiff of any franchife, whether it have the clause non omittas or not, and whether the defendant be within a franchife or in the county at large, for the king's prerogative shall be preferred to any franchise: But it is said, that this is to be intended only where in the grant of the franchife no mention is made of causes to which the king is a party. 2 Haw. 284.

15. And if the party be in an house, if the doors be shut, and Breaking open the sheriff (having given notice of his process) demand admit-doors. tance, and the doors be not opened, he may break open the doors

and enter to take the offender. 2 H. H. 202.

16. But no person, on the lord's day, shall serve or cause to be process on a served any writ, process, warrant, order, or judgment (except in Sunday. cases of treason, felony, or breach of the peace); but the service thereof shall be void, and the person serving the same shall be liable to answer damages to the party grieved, in the same manner as if he had done it without any writ, process, warrant, order, or

judgment at all.

gment at all. 29 C. 2. c. 7. f. 6.
17. It feems to be agreed, that every fuit, whether civil or process disconticriminal, and also every process in such suit against jurors, ought nued. to be properly continued from day to day, from its commencement to its conclusion, without any the least gap or chasm; and the suffering any such gap or chasm is properly called a discontinuance; and the continuing the fuit by improper process (as by a capias instead of a distringus), or by giving the parties an illegal day, is properly called a miscontinuance; and if the justices, before whom the matter is depending, do not come on the day to which it is continued, it is faid to be put without day, and cannot be revived without a re-summons or re-attachment. 2 Haw. 298,

Now process may be discontinued several ways. As, 1. Where the second is not tested on the very same day, on which the first is returnable. 2. Where there is a fessions intervening between the teste and the return of a capias, that the defendant may not be imprisoned an unreasonable time. But it is no objection to an exigent, that it is not returnable the next fessions, because it must Vol. II.

allow time for five counties to be holden between its teffe and return. 3. Where after issue or demurrer, the court gives the party a day to a diftant fessions, without making any continuance to that immediately following. 4. Where the fessions to which the fuit is continued is adjourned, and the fuit is not adjourned 5. Where any of the parties are described in any continuance of the fuit, whether on the roll, or by process, by a name or addition variant from those in the original, tho' only in one letter. 6. Where a venire or distringus are issued, without any award on the roll to warrant them. 2 Haw. 298, 299.

And it feems generally to be taken as an undoubted principle. That a discontinuance by suffering a total chasm in the proceedings, whether on the roll, or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance or pleading over: But it is holden by the greater number of authorities, that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be never fo erroneous or defective, fo that it never were discontinued; for the end of process is to compel an appearance, and the end being ferved, and a legal charge appearing against the defendant no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court, in order only to have him brought in again in better form. 2 Haw. 300.

Process stayed by

18. The processes (as well of capias as of outlawry) may be putting in bail. stayed by a Supersedeas issuing from other justices (out of sessions) testifying that the party hath come before them, and hath found fureties for his appearance to answer to the indictment, or to pay his fine. Dalt. c. 193.

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And it feemeth that even any one justice may bail persons indicted at the fessions, for any offence under the degree of selony; for that the statutes relating specially to the power of justices in granting bail, do not in this case seem to take away the power, which one justice had before the making of the said statutes.

2 Harv. 103.

Process of outlawry.

19. Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the exigent (which is a writ commanding the theriff to cause the defendant (exigi) to be demanded from county court to county court, until he be outlawed). And fuch judgment is entred thus, Therefore by the judgment of the coroner of our lord the king of the county aforesaid, he is catlawed. 2 Haw. 446.

Meaning of the word outlaw.

20. The word outland (utlaghe) utlagatus, is not from the latin lex, but from the faxon laga, which fignifies law. And a person outlawed signifies one that is out of the protection of the

king, and out of the aid of the law.

21. And a man which is outlawed is called outlawed, but a woman which is outlawed is called waived, and not utlagata; for that women are not fworn in leets or tornes, as men which are of the age of 12 or more are; and therefore men may be called atlagati, that is, extra legem positi, but women are waviata,

A woman outlawed.

that is, dereliele, lest out or not regarded, because they were not fworn to the law: wherein it is to be noted, that of ancient time a man was not faid to be within the law, that was not fworn to the law, which is intended of the oath of allegiance in the leet.

And hence it is, that a man under the age of 12 years, cannot

be outlawed. I Inft. 128.

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22. Process of outlawry lies in all indictments of treason or For what outfelony, and on all returns of a rescous; and also on all indict lawry may be. ments of trespass with force and arms; and it seems probable, that it lies on an indictment of conspiracy, or deceit, or any other crime of a higher nature than a trespass with force and arms; but not on any indictment for a crime of an inferior nature. And it feems agreed, that it lies not on any action on a statute, unless it be given by such statute, either expresly, as in the case of a pramunire, or impliedly, as where a recovery is given by an action wherein fuch process lay before, as on a writ of trespass for a forcible entry, on the 8 H. 6. c. 9. because the statute expresly gives a recovery by such writ, and such process lies in it by the common law. 2 Hazv. 302, 303.

23. In every action personal wherein any exigent shall be Outlawry proawarded out of any court, one writ of proclamation shall be claimed at the awarded out of the same court, having day of teste and return as fessions. the writ of exigent shall have, directed and delivered of record to the sheriff where the defendant dwells; which writ of proclama-

make one proclamation in the open county court, and another at the general quarter fessions where the defendant dwells, and another a month at least before the quinto exactus, by virtue of the faid writ of exigent, at or near the most usual door of the church

tion shall contain the effect of the action: And the sheriff shall

or chapel where the defendant shall be dwelling at the time of the exigent awarded, upon a Sunday immediately after divine service.

31 El. c. 3.

Also, upon iffuing any exigent out of any of the king's courts, against any person for a criminal matter, before judgment or conviction, there shall also iffue a writ of proclamation, bearing the same teste and return, where the person in the record of the proceeding is mentioned to inhabit, according to the form of the 31 El. c. 3. which writ of proclamation shall be delivered to the theriff 3 months before the return of the same. 4 & 5 W. c. 22.

24. If there are two coroners in a county, or more, one may Return of the execute the writ, as in case of an exigent, but the return must be outlawry.

in the name of the coroners. 2 H. H. 56.

And the return of the outlawry must be certain: It must shew where the county court was held, and in what county; and muit return the day, and year of the king to every Exaclus. 2 H. H.

And also the sheriff's name and office must be subscribed to the

return of the exigent. 2 H. H. 204.

25. It is said, that the justices in sessions cannot issue a capias Capias utlagautlagatum, but must return the record of the outlawry into the tum.

Z 2

king's bench, and there process of capias utlagatum shall issue

But in T. 10 J. The opinion of all the court of common pleas was, that if one be outlawed before the justices of the peace on an indictment of felony, they may award a capias utlagatum; and fo was the opinion of Periam chief baron, and all the court of the exchequer: for they that have power to award process of out. lawry, have also a power to award a capias utlagatum, as incident to their authority and jurisdiction. 12 Co. 103.

26. If a person be outlawed at the suit of one man, all men shall take advantage of this personal disability. 1 Inft. 128.

But fuch disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. I Inft. 128.

27. Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. 2 Haw. 446.

For an inferior offence.

Goods forfeited

from the time

of iffuing the

exigent.

Consequences of

For treason, or telony.

outlawry:

28. But the outlawry for a misdemeanor, doth not mure as a conviction for the offence, as it doth in cases of treason and felony; but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. K. and Tippin, 1 W. 2 Salk. 494.

29. The very issuing of the exigent, in case of treason or felony, gives to the king the forfeiture of the goods of the party, from the time of the teste of the writ of exigent: and the forfeiture by the exigent awarded stands, altho' the indistment be quashed, until there be a judgment of reversal on a writ of error; because the king's title being of record, must be avoided by a re-

2 H. H. 204, 205.

Lands forfeited from the time of the outlawry.

30. And as the award of the exigent gives the forfeiture of the goods, so the outlaway gives the forfeiture or loss of the lands of the party outlawed, to wit, in case of outlawry of treason his lands are forfeited to the king, of whomsoever they are held; and in case of outlawry of felony, to the lord by escheat, of whom they are immediately holden. 2 H. H. 206.

But the outlawry must be first returned.

31. But it must be remembred, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any efcheat; but it must be returned by the sheriff, with the writ of exigi facias, and the return indorsed. 2 H. H. 206. Or else it must be removed by certiorari: for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. I Infl.

And after inquifition found.

32. And by the outlawry all perfonal chattels are vested in the king by forfeiture; but real chattels, or freehold estates are not vested in the king, till after inquisition found. 3 Salk. 262.

Whether it is lawful to kill an outlaw.

33. In ancient times no man could have been outlawed but for selony, the punishment whereof was death; and upon this account, an outlawed man was called woolf shead, because he might be put to death by any man, as a wolf that hateful beaft might. But in the beginning of the reign of K. Ed. 3. it was refolved

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by the judges, for avoiding of inhumanity, and of effusion of christian blood, that it should not be lawful for any man but the sheriff, having lawful warrant, to put to death any man outlawed, tho' it were for felony; and if he did, he should undergo such pain of death, as if he had killed any other man: and so the law continueth to this day. 1 Inst. 28.

34. If a man be indicted before justices of the peace, and Judges of affize thereupon outlawed, and is taken and committed to prison, the may award exe-justices of gaol delivery may award execution of this prisoner; for son outlawed they are constituted to deliver the gaol. 4 Inst. 169. Hale's Pl. before justices of 158. 2 H. H. 35.

35. Where clergy is allowable, it shall be as much allowed to Clergy in cases one who is outlawed, as to one who is convicted by verdict or of outlawry.

confession. 2 Haw. 343.

But a statute taking the benefit of clergy from those who shall be found guilty, doth not thereby take it from those who are out-

lawed. 2 Harv. 343.

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But by the 3 & 4 W. c. 9. f. 2. If any person be indicted of any offence, for which, by any former statute, he is excluded from elergy, upon conviction; if he shall be outlawed thereupon, he shall not have his clergy.

By any former flatute] Hereby it appears, that this extends not to offences made felonies by statutes subsequent to this statute. 2 Haw. 348.

36. Where a person is outlawed, the defendant may shew all Person outlawed the matter and outlawry returned of record, and demand judg-cannot be plainment if he shall be answered, because he is out of the law, to sue tiff. an action during the time that he is outlawed. 1 Inst. 128.

37. It feems to be a good challenge of a juror, that he is out-Cannot be a julawed, either for a criminal matter, or as some say, in a personal rev. action; but not a principal challenge, but only to the favour, unless the record of the outlawry be produced. 2 Haw, 215, 417.

38. But it feems clear, that outlawry in a personal action is not May be a wita good exception against a witness, as it is against a juror. 2 Harv. nets.

39. An outlawed person may make a will, and have executors May make a or administrators. Cro. El. 575.

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. 1 Leon. 325.

40. Outlawry may be reversed several ways; as by procuring Reversing outa supersedeas and delivering it to the sheriff before the quinto exastur, or by shewing any matter apparent on record which makes
the outlawry erroneous, as the want of an original, or the omission
of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between
the original and exigent or other process, or by a missioner, or
want of addition. 2 Have. c. 50.

41. And upon a writ of error upon an outlawry in felony, the In what case the party outlawed must render himself in custody, and pray the allow-party must appear of the writ of error in person: and if the outlawry be revertor reverse it.

led, he shall be put to answer the indictment. 2 H. H. 209.

Z 3

But

### Piocels.

But by the 4 & 5 W. c. 18. one outlawed, except for treason or felony, need not appear in person to reverse an outlawry, but by attorney. 2 Salk. 496.

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Other kinds of process.

42. There is another kind of process out of a court of record, against offenders, called attachment, which is generally for contempt; which belongs to title Attachment.

The process against jurors, may be seen in the title Jury, And the process against witnesses, in title Endence.

#### Forms of process; and first of a Venire.

EORGE the second, by the grace of god, of Great Britain,

France, and Ireland, king, defender of the faith, and so forth.

To the sheriff of the county of Westmorland, greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you cause A. O. of—in your said county, yeoman, to come before our justices assigned to keep our peace, and also to hear and determine diwers felonies, trespasses, and other misdemeanors in the said county committed, at—in your said county, on the—day of—next ensuing, to answer unto us upon certain articles presented against him the said A. O. And have you there then this precept. Witness J. P. and K. P. at—the—day of—in the—year of our reign.

And upon this Venire, if the defendant be returned sufficient, and maketh default, then a Distringus shall be awarded, and so the same process infinite, until he come in: But if a nibil habet be returned at the first, then after the Venire, there shall go out a Capias, Alias, Pluries, and Exigent. Dalt. Sher. 160.

#### Form of a Distringas.

EORGE the second, by the grace of god, of Great Britain, France, and Ireland, king, defender of the faith, and so forth. To the sheriff of the county of —— greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and distrain A. O. of —— in your county, yeoman, by all his lands and tenements &cc. and that you answer for the issues thereof &cc. and that you have his body before our justices assigned [and so on, as before in the Venire.]

But if a nihil (as hath been said) be returned at the first upon the Venire facias; then a Capias shall issue, thus:

EORGE the second, by the grace of god, of Great Britain, France, and Ireland, king, defender of the faith, and so forth: To the sheriff of the county of greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and take A.O. of in your county, yeoman, if he shall be found in your bailiwick, and him cause to be safely kept; so that you have his body before our justices assigned to keep our peace, and also to bear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at in your county,

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other unty, Note; The cause why the entry is made, and he did not come, is, because the party may appear voluntarily, and so avoid the attachment or arresting of his body.

#### The Alias Capias.

EORGE—To the sheriff—We command you, as we before commanded you, that you omit not— (as before.)

At which day—(as before); and he did not come. Therefore it is commanded to the sheriff, as it bath been often commanded, &c.

### The Pluries Capias.

EORGE &c. To the sheriff &c. We command you, as we have often commanded you, that you omit not (as before.) at which day A. S. knight, the sheriff aforesaid, returned, that the eforesaid A. O. is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cause to be demanded &c.

#### The Exigent.

EORGE &c. To the sheriff &c. greeting. We command you, that you cause A. O. of \_\_\_\_\_\_ in your county, yeoman, to be demanded, until, by the law and custom of our kingdom of England, he be outlawed, if he shall not appear; and if he shall appear, that then you take him, and cause him to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers selonies, trespasses, and other misdemeanors in your said county committed, at the general quarter sessions of the peace of your county next after the feast of \_\_\_\_\_ next ensuing to be held, wheresoever in the same county it shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicated. And have you there then this writ. Witness Sir J. P. baronet at \_\_\_\_\_ in the said county, the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of our reign.

At which day A. S. knight, sheriff of the county aforesaid, returned, that at the county holden at \_\_\_\_\_ the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_\_ year of the reign of our lord the king that now is, and so at four other counties then next following, there holden, the aforesaid A. O. was demanded, and did not appear. Therefore by the judgment of the coroner of our said lord the king, in the county

aforefuid, be was outlawed.

## Process.

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### The Capias Utlagatum.

EORGE &c. To the sheriff &c. greeting. We command you, that you omit not, by reason of any liberty in your county, but that you take A. O. late of \_\_\_\_\_ in your county, labourer, if he shall be found within your county, and him cause safely to be kept, so that you have his body before the keepers of our peace and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors in your county committed, at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ to stand right in our court before our justices aforesaid, upon a certain outlawry against him the said A. O. promulged, at our suit, for certain felonies (or trespasses) whereas he was convided the \_\_\_\_\_ day of \_\_\_\_\_ And have you then there this writ. Witness &c.

Profanenels. See Blasphemy.

## Prophecies.

F any person shall advisedly and directly advance, publish, and set forth by writing, printing, singing, or any other open speech or deed, any fond, fantastical, or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognizances, or signets, or upon or by reason of any time, year, or day, name, bloodshed, or war, to the intent thereby to make any rebellion, insurrection, diffention, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of assize, or justice of the peace, within six months after the offence committed, he shall for the first offence be imprisoned for a year, and forfeit 10 l. and for the second offence, shall be imprisoned for life, and forfeit his goods: half the forfeitures to the king, and half to him who shall sue for them in any court of record. 5 El. c. 15.

Mr. Barlow thinks that the carrying of white roses on the tenth

of June, comes within the purview of this statute.

Protestant Distenters. See Distenters.

# Publick worthip.

Impugners of the I. Mpugners of the book of common prayer, of the 39 articles of the cles, of the rites and ceremonies of the church of England, of the episcopal government of the church, or of the form of ordering and confecrating archbishops and bishops, shall be info

fasto excommunicated, and not restored but upon repentance,

and publick recantation. Can. 4, 5, 6, 7, 8.

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2. If any person shall speak unreverently of the sacrament Speaking irreof the lord's supper, he shall suffer imprisonment, and make verently of the facrament. fine and ranfom at the king's will. And three justices (1 Q.) may take information by the oaths of two witnesses; and afterwards, at the fessions, may inquire thereof by the oaths of 12 men upon indictment. And they shall, at the sessions where the offender shall be indicted, direct a writ to the bishop to appear by himself or deputy at the trial. But no person shall be molested, but within three months after the offence committed. I Ed. 6. c. 1.

3. All persons, having no lawful or reasonable excuse to be Penalty of 12 d. absent, shall refort to their parish church or chapel, or upon rea- a Sunday for not sonable let thereof, to some usual place where divine service shall resorting to be performed, according to the liturgy and practice of the church church. of England, upon every Sunday and holiday; on pain of punishment by the censures of the church, or of forfeiting 1 s. for every offence to the poor, to be levied by the churchwardens by distress. 1 El. c. 2. f. 14, 24. Except dissenters qualified by the act of toleration. 1 W. c. 18.

And he who is absent from his own parish church, shall be put

to prove where he went to church. I Hazv. 13.

And any justice of the peace, on proof unto him made (in one month after default in coming to church on Sundays) by confession, or oath of witness, may call the party before him; and if he shall not make a sufficient excuse, and due proof thereof, to the justice's fatisfaction, such justice may give warrant to the churchwarden to levy 12 d. to the use of the poor, by distress. distress, commitment till paid. 3 f. c. 4. s. 27, 28.

4. Every person above the age of 16 years, who shall not re- Penalty of 201. pair to some church, chapel, or usual place of common prayer, a month, for not being convicted thereof before the judges of assize, or justices in church. fessions, shall forfeit 201. a month, one third to the king, one third to the maintenance of the poor of the parish, and of the houses of correction, and of impotent and maimed soldiers, as the lord treasurer, chancellor, and chief baron of the exchequer shall order, and one third to him who shall sue in any court of record. If not paid in 3 months after judgment, he thall be imprisoned till he pay, or conform himself to go to church. 23 El. c. 1. s. 8, 11. 29 El. c. 6. f. 7.

And this penalty of 20 l. a month dispenseth not with the forfeiture of 12 d. a Sunday; for both may well stand together; and the 12d. is immediately forfeited upon the absence of each par-

ticular day. 1 Haw. 13.

And every offender in not repairing to divine service, having being once convicted (and not conforming) shall pay 20 1. a month into the exchequer, in the term of Easter or Michaelmas which shall be next after such conviction; and also shall, without any other indictment or conviction, for every month after such conviction, fo long as he shall not conform, pay into the exchequer in every Easter and Michaelmas term, as much as shall then remain unpaid, after such rate of 20 l. a month: And if default shall be

## Bublick Worthin.

made in any part of such payment, the king may by process out of the exchequer, feize all the goods, and two parts of the land, of such offender., 29 El. c. 6. s. 3, 4, 5, 6. 3 F. c. 4. s. 8, 9.

Or the king may refuse the 201. a month, tho' it be duly ten. dred, and seize two parts of the lands at his option. 3 J. c. 4.

But copyhold lands are not within these statutes, in respect of the prejudice which would accrue to the lord, by the loss of his fervices. 1 Haw. 14.

And every person who shall usually on Sundays have in his house divine service as established by law, and be thereat himself usually present, and shall four times a year go to the parish church or other common church or chapel, shall not incur any penalty for not repairing to church. 23 El. c. 1. f. 12.

And this also shall not extend to qualified protestant diffenters,

1 W. c. 18.

Penalty for harbouring a recufant.

Recufant difabled as to offi-

Publick worthip

Qualification of

lecturers.

in the navy.

5. Every person who shall retain in his service, or shall relieve, keep, or harbour in his house any servant, sojourner, or stranger who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10 / for every month he shall continue in his house such person so forbearing. And the justices in fessions may determine the same. 3 7. c.4. f. 32, 33, 36.

6. No recusant convict shall practise law or physick, nor shall be judge or minister of any court, or bear any military office by land or sea; and shall forfeit for every offence 100 /. And shall also be disabled to be executor, administrator, or guardian. 37.

c. 5. f. 8, 22.

7. A recufant conforming himself shall be discharged of all Recufant conpenalties, which he might otherwise sustain by reason of his reforming. cufancy. 1 J. c. 4. s. 2.

8. All commanders, captains, and officers at sea, shall cause the publick worship of almighty god, according to the liturgy of the church of England, to be performed in their respective ships: And prayers and preachings by the chaplains shall be performed

diligently. 22 G. 2. c. 33. art. 1. 9. No person shall be received as a lecturer, or allowed to preach or read any lecture or fermon, without licence from the bishop, and affenting to the 39 articles, and reading the common prayer before his first fermon, and on the first lecture day of every month; on pain of three months imprisonment, for every offence, by two justices of the peace on certificate from the bishop of the

offence committed. 13 & 14 C. 2. c. 4. f. 19, 20, 21.

Diffurbers of

10. By the 1 Mar. feff. 2. c. 3. If any person shall disturb a publick worship. preacher in his sermon by word or deed, he shall be apprehended and carried before a justice of the peace, who shall commit him to fafe custody, and within fix days, he and another justice shall examine the fact, and if they find him guilty by two witnesses, or confession, they shall commit him to gaol for three months, and further to the next sessions; and if at the sessions he repents, and is reconciled, he shall be discharged on finding sureties for his good behaviour for a year; if not, he shall be continued in gaol till he

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does; faving the ecclefiaftical jurisdiction; and he shall not be punished both ways.

And this statute, tho' made in queen Mary's reign, extendeth

to the divine fervice now established. Cod. 372.

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law. Watson 636.

And by the 1 W. c. 18. f. 18. If any person shall willingly and of purpose, come into any church, chapel, or other congregation permitted by the act of toleration, and disquiet or disturb the same, or misuse any preacher or teacher; he shall, on proof thereof before one justice, by two witnesses, find two sureties to be bound by recognizance in 50% and in default thereof shall be committed till the next fessions, and on conviction there of the faid offence, he shall forfeit to the king 20 1.

But it shall be lawful for all men, as well in churches, chapels, oratories, as other places, to use openly any psalms or prayer taken out of the bible, at any due time, not letting or omitting

thereby the service. 2 & 3 Ed. 6. c. 1. f. 7.

And the court of king's bench refused to grant a certiorari, to remove an indictment at the fessions, for a person not behaving himself modestly and reverently at the church, during divine service; which altho' punishable by ecclesiastical censures, yet the court conceived it a proper cause within cognizance of the justices of the peace. 1 Keb. 491. And this was before the abovementioned statute of the 1 W. c. 18.

11. No clergyman shall be arrested in any church or church- Arresting a cleryard, whill he attends to divine service; on pain of the imprison-gyman attending ment of the offender, and ransom at the king's will, and gree to divine service.

But the arrest notwithstanding, if not on a Sunday, is good in

the party arrested. 50 Ed. 3. c. 5. 1 R. 2. c. 15.

## Purveyors.

A Nciently the king's court was supplied with necessaries Abuses of purfrom the ancient demelnes of the crown; and in respect veyors. thereof, the tenants of those lands had many privileges, which they still enjoy: But this method being found to be troublesome and inconvenient, was by degrees disused; and afterwards the king was wont to appoint certain officers to buy-in provisions for his houshold, who were called purveyors, and claimed many privileges by the prerogative of the crown. 2 Inft. 542. I Haw. 114.

2. The feveral laws which restrained the exorbitancies of these Purveyance purveyors, make up a pretty large title in the old books; but taken away. these laws proving ineffectual to remedy the evil complained of, at length by the statute of the 12 C. 2. c. 24. purveyance was intirely taken away: By which it is enacted, that no fum of money, or other thing, shall be taken for any provision, carriages, or purveyance for the king:

And

## purveyors.

And that no person, under colour of purveyance, shall take any timber, suel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage, or other thing, without consent of the owner; nor shall require any to surnish any horses, oxen, or other cattle, carts, ploughs, wains, or other carriages, for the use of the king, or his houshold, without the owner's consent:

On pain of being committed to gaol, by a justice of the peace and the constable, until the next fessions, to be there indicted; and also of paying to the party treble damages, and

treble costs, on an action at law.

### Quakers.

S O far as quakers are concerned in the act of toleration, amongst other protestant differences, see title Dissenters.

For quakers tithes, see title Eithes.

For quakers oaths, see title Daths.

Quarentine. See Plague.

### Rape.

I. What it is.

II. Evidence on an indistment of rape.

III. Punishment of rape.

IV. Principal and accessary.

### I. What it is.

Rape, what.

1. R APE is, when a man hath carnal knowledge of a woman, by force, and against her will. 2 Inst. 180.

Child under 10.

z. Also, if any person shall unlawfully and carnally know, and abuse any woman child, under the age of ten years, whether with her consent or against it, he shall be guilty of selony without benefit of clergy. 18 El. c. 7.

Consenting at

3. The offence of rape is no way mitigated, by shewing that the woman at last yielded to the violence, if such her consent was forced by fear of death, or of duress. 1 Haw. 108.

Ravishing a common strumpet. 4. Also, it is not a sufficient excuse in the ravisher, to prove, that the woman is a common strumpet; for she is still under the protection of the law, and may not be forced. 1 Haw. 108.

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7. Nor is it any excuse, that she consented after the fact. Consenting after

And by the 6 R. 2. c. 6. When any woman is ravished, and afterwards doth confent to the ravisher; they shall both of them he disabled to have any inheritance, dower, or joint feoffment, but the next of blood shall enter. And the next of kin to the woman ravished may have an appeal against the ravisher, notwithstanding such consent; and the defendant shall not be received

6. It is faid by Mr. Dalton, that if a woman at the time of Woman ravished the supposed rape do conceive with child by the ravisher, this is conceiving no rape; for (he fays) a woman cannot conceive except she doth consent. And this he hath from Stamford, and Britton, and Finch.

Dalt. c. 160.

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But Mr. Harvkins observes, that this opinion seems very queflionable; not only because the previous violence is no way extenuated by such a subsequent consent; but also, because if it were necessary to shew, that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not; and likewise because the philosophy of this notion may be very well doubted of. I Haw. 108.

And L. Hale fays, this opinion in Dalton feems to be no law.

1 H. H. 731.

#### II. Evidence on an indictment of rape.

1. The party ravished may give evidence on oath, and is in The woman's law a competent witness; but the credibility of her testimony, oath. and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact

that concur in that testimony. 1 H. H. 633.

2. For instance, if the witness be of good fame; if she pre-Circumstances i fently discovered the offence, and made pursuit after the offender; favour of it. shewed circumstances and signs of the injury, whereof many are of that nature, that only women are the most proper examiners and inspectors; if the place, wherein the fact was done, was remote from people, inhabitants, or passengers; if the offender fled for it: thefe, and the like, are concurring evidences to give greater probability to her testimony, when proved by others as well as her 1 H. H. 633.

3. But on the other fide, if she concealed the injury for any Circumstances in considerable time, after she had opportunity to complain; if the disfavour of it. place, where the fact was supposed to be committed, were near to inhabitants or common recourse or passage of passengers, and the made no outcry when the fact was supposed to be done, when and where it is probable she might be heard by others; or if a man prove himself to be in another place, or in other company, at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to be done in a place where it was impossible the man could have access to her at that time, as if the room was locked up, and the key in the cuflody of another person: these and the like circumstances carry a

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r the Nor strong presumption, that her testimony is false or feigned. t H. H.

Caution.

4. Upon the whole; rape, it is true, is a most detestable crime. and therefore ought feverely and impartially to be punished with death: but it must be remembred, that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, tho' never so innocent : Therefore a wise jury will be cautious upon trials of offences of this nature, that they be not fo much transported with indignation at the heinousness of the offence, as to be over hastily carried to the conviction of the person accused thereof, by the confident testimony, sometimes of malicious and false witnesses. 1 H. H. 635, 636.

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#### III. Punishment of rape.

Felony without

1. Of old time rape was felony, for which the offender was to benefit of clergy. fuffer death: afterwards the offence was made leffer, and the punishment changed from death to the loss of those members whereby he offended; that is to say, it was changed to castration and loss of his eyes, unless she that was ravished, before judgment, demanded him for her husband. 2 Inft. 180.

> Then, by the statute of the 3 Ed. 1. c. 13. it was made a trespass, subjecting the offender to two years imprisonment, and a fine at the king's will; and it was again made felony by the 13 Ed. 1. c. 34. and at last by the 18 El. c. 7. was excluded

from the benefit of clergy.

Pardon.

2. And no charter of pardon shall be allowed for rape, unless

the rape be specified therein. 13 R. 2. ft. 2. c. 1.

And all rapes are excepted out of the general pardon, of the 20 G. 2. c. 52.

### IV. Principal and accessary.

Persons present and aiding, are principals.

1. Mr. Hawkins fays, all who are present, and actually affist a man to commit a rape, may be indicted as principal offenders, whether they be men or women. I Haw. 108.

And fo, one woman may be a principal to the ravishment

of another.

Not present, acseffaries.

2. And L. Hale fays, that by the 18 El. c. 7. the principals in rape are oufted of clergy, whether they be principals in the first degree, to wit, he that committed the fact; or principals in the fecond degree, to wit, present, aiding, and abetting: but accessaries, before and after, have their clergy. 1 H. H. 633.

Recognizance.

## Recognizance.

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Recognizance is a bond of record, testifying the recog- What it is, nizor to owe a certain sum of money to some other; and the acknowledging of the same is to remain of record; and none can take it but only a judge or officer of record. Dals.

2. And these recognizances, in some cases the justices of the In what cases it peace are enabled to take by the express words of certain statutes: may be taken. But in other cases (as for the peace, and good behaviour, and the like) it is rather in congruity, and by reasonable intendment of law, than by any express authority given them, either by their commission, or by the statute law. Crom. 125. Dalt. c. 168.

But wherefoever any statute giveth them power to take a bond of any man, or to bind over any man to appear at the affizes or sessions, or to take sureties for any matter or cause, they may take a recognizance. Yea, wheresoever they have authority given them to cause a man to do a thing, there it seemeth they have in congruity power given them to bind the party by recognizance to do it: and if the party shall resuse to be bound, the justice may send him to gaol. Dalt. c, 168.

But he can take no recognizance but only of such matters as concern his office: and if he doth, it seemeth to be void. Dalt. c. 168.

3. Every obligation and recognizance, taken by justices of the The form of it, peace, must be made to our lord the king; on pain of imprisonment of any person that shall take it otherwise. Dalt. c. 168.

It must also contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. Barl. Recog.

And it is most commonly subject to a condition, which is either indersed, or underwritten, or contained within the body of it; upon the performance of which the recognizance shall be void.

4. When the parties are to enter into recognizance, call them Manner of take by their names thus: "You A. B. acknowledge to owe to our fo-king it.

"vereign lord the king, the fum of — And you C. D. acknow-

"ledge to owe to our fovereign lord the king, the fum of
"To be levied of your respective goods and chattels, lands and
"teremones for the way of our field lord the king, his hair and

"tenements, for the use of our said lord the king, his heirs and fuccessors, if default shall be made in the condition following;

"That is to fay, if you the faid A. B. shall make default in ap"pearing &c." But the parties need not to fign it. id.

And it is usual for the justices to mark at the foot of the examination, A. B. in 40 l. to appear &c. And from such short

note to make out a record afterwards. id.

Yet the recognizance is a matter of record presently, so soon as it is taken and acknowledged, altho' it be not made up. Dalt. 6. 168.

Lord

How to be certified.

### metognizance.

Lord Coke (1 Inft. 260.) fays, that a record is a memorial or remembranee in rolls of parchment &c. From whence it feemeth that a recognizance ought to be ingroffed on parchment, perhaps for this reason, because parchment is more durable than paper; but fince there is no law which prohibits it to be ingroffed on paper, it feemeth that if it shall be on paper only, and not on parchment, it is good in law.

And when it is made up, if the justice shall only subscribe his name, without his feal to it, this is well enough; and that may be in either of these sorts, Acknowledged before me J. P. or only to subscribe his name thus, J. P. Dalt. c. 176.

5. The justices shall certify their recognizances for keeping the peace, to the next fessions, that the party may be called; and if he make default, the default shall be recorded, and the recognizance, with the record of the default, shall be fent and certified into the chancery, king's bench, or exchequer. 3 H. 7. c. 1.

But in cases of felony, the recognizances are to be certified to

the general gaol delivery. I & z P. & M. c. 13.

The conditions of recognizances, in all the variety of cases, are interspersed under their proper titles.

### Recognizance with fureties.

Westmorland. D E it remembred, that on the ---- in the ---- year of the reign of our lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, A. O. of the county aforesaid, yeoman, and A.S. of --- in the county aforefail, taylor, and B. S. of \_\_\_\_\_ in the county aforefail, labourer, personally came before me J. P. esquire, one of the justices of our faid lord the king, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said lord the king; that is to fay, the faid A. O. the sum of 201. and the said A. S. and B. S. each the sum of 101. separately, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if the said A.O. shall make default in the condition bereon indorsed [or, here under written].

Acknowledged before me

J. P.

### Recognizance without fureties.

DE it remembred, that on the -Westmorland. 1 - in the - year of the reign of our lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, A. O. of \_\_\_\_ in the said county, yeoman, personally came before me J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace in the faid county, and acknowledged himself to cave to our said lord the king, and l of ou A. C

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may of th queft king, 101. of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said A.O. shall fail in the condition underwritten [or, indorsed].

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The Condition of the abovewritten [or, within written] recognizance is such, that if the abovebound A.O. shall ——— Then the said recognizance to be woid, or else remain in its force.

Recusants. See Popery, and Publick worthip.

Regrater. See Kozestaller. Release. See Surety. Rent. See Distress.

### Rescue.

1. RESCOUS is an ancient French word, coming from What is a rescourser, that is, recuperare, to recover; and fignifies rescous. a forcible setting at liberty against law, a person arrested by the process or course of law. 1 Inst. 160.

It feems that it is necessary, that the rescuer should have knowledge that the person is under arrest for a criminal offence, if he be in the custody of a private person; but if he be in the custody of an officer, there at his peril he is to take notice of it. 2 H. H.

But it is faid, that to rescue a felon taken on a general warrant, to answer what shall be objected against him, no cause being expressed in the warrant, is not felony. 1 H. H. 578.

Nor unless a felony hath been really done. Hale's Pl. 116.

2. Altho' a prison breaker may be arraigned for that offence, When it shall be before he be arraigned of the crime for which he was imprisoned; tried. yet he, who rescues one imprisoned for felony, cannot, according to the better opinion, be arraigned for such offence as for a felony, till the principal offender be attainted; but he may be immediately proceeded against for a misprision, if the king pleases. 2 Haw. 140.

And therefore if the principal die before the attainder, he shall

be fined and imprisoned. Hale's Pl. 116.

Also if the principal be found not guilty, or guilty of a crime not capital, the rescuer ought to be discharged of felony, but he may be fined for the missemeanor. 1 H. H. 598, 599.

3. An indictment of rescous, must set forth the nature and cause Indictments of the imprisonment, and the special circumstances of the fact in question. 2 Haw. 140.

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Punishment.

Clergy.

Outlawry.

4. A hindrance of a person to be arrested, that has committed felony, is a misdemeanor, but no felony: But if the party be arrested, and then rescued, if the arrest was for felony, the rescuer is a felon; if for treason, a traytor; if for trespris, sineable, Hale's Pl. 116. 2 Haw. 140.

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There are also special penalties enacted for rescuing offenders against particular statutes, which belong not to this general

title.

5. Altho' the felony for which a man is arrefled, be not within clergy; yet the rescuing him is within clergy. 1 H. H. 599, 607.

6. Upon the return of a refcous, process of outlawry shall is-

fue. 2 Haw. 302.

#### Indictment for a refcue.

HE jurors for our lord the king upon their eath present, that on the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_ J. P. esquire, one of the justices of our said lord the king, affigned to keep the peace in the faid county, and also to bear and determine divers felonies, trespasses, and other misdemeanors in the faid county committed, did make, direct, and deliver a warrant or precept in swriting, to A. C. of - in the faid county, yeoman, constable of the town of - oforefuid in the county oforefaid; by which faid warrant he the faid A. C. the constable aforesaid, was commanded to take the body of A. O. late of yeoman, and bring and have him the said A.O. before the said J. P. to be examined by him the faid J. P. concerning an affault faid to have been committed by him the faid A. O. upon A. I. of - yeoman : Which faid A. C. the conflable aforesaid, afterwards, that is to fay, on the --- day of --- in the year aforesaid, at - aforesaid, in the county aforesaid, by virtue of the faid warrant, did take and arrest him the said A. O. for the cause aforesaid, and him the said A. O. in his custody by virtue of the said warrant then and there had: And that the said A. O. late of - aforesaid, in the county aforesaid, yeoman, and B. O. late of the Same, yeoman, well knowing the Said A. O. so to be arrested as aforesaid, afterwards, to wit, on the said - day of --- in the year aforefaid; at --- aforefaid, in the county aforefaid, with force and arms, in and upon the said A. C. the constable aforesaid, then and there being in the peace of god and of our said lord the king, and in the execution of his said office then and there being, did make an assault, and bim the said A. C. then and there did beat, around, and ill treat; and that the said B. O. him the said A. O. out of the custody of the said A. C. and against the will of the said A. C. then and there with force and arms unlawfully did rescue and put him at large to go where he would; and that the said A. O. himfelf out of the custody of the said A. C. and against the will of the said A. C. then and there with force and arms, unlawfully did refine, and escape at large, where he would go; in contempt

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of our faid lord the king and his laws, to the great damage of the faid A. C. to the evil example of all others in the like cafe offending, and against the peace of our Said lord the king, his crown and dignity.

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# Restitution of stolen goods.

HERE are three means of restitution of goods, for the party from whom they were stolen; 1. By appeal of robbery or larceny. 2. By the statute of the 21 H. 8. c. 11. And, 3. By course of the common law. 1 H. H. 538.

1. Upon an appeal of robbery or larceny. If the party were Reditution upon convict thereupon, restitution of the goods contained in the ap- an appeal. peal, was to be made to the appellant; for it is one of the ends of that fuit. 1 H. H. 538.

And hence it is, that if in an appeal of felony or robbery, the appellant omit any of the goods stolen from him, they are forfeit and conficate to the king. I H. H. 538.

And this appeal must be upon fresh suit; and tho' anciently the law was strict herein, as to the time and manner of the pursuit and apprehending of the felon, yet the law is now more liberal. 1 H. H. 540.

For if the felon be taken by any others, as by the sheriff, yet if the party robbed come within a year after, and give notice of the felony, and enter his appeal, this is a fresh suit, if he used his diligence shortly after the felony to have taken him. 540.

If a felon waive the goods stolen, without any pursuit after him, those goods are not in law waived, nor forfeit to the king or lord of a franchife; but if he waive them upon a pursuit of him, then they are waived in law, and forfeit to the king or lord of the liberty. 1 H. H. 541.

And this forfeiture is not like a firay, where tho' the lord may feize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot feize his own goods, tho' upon fresh suit within the year and day. I H. H.

But yet this is not an absolute loss of the owner's goods, but rather an expedient, fettled by law, to drive the owner to convict the felon by profecuting his appeal; and therefore if he make fresh suit, and prosecute his appeal, and the felon be thereupon convict or attaint, and the fresh suit be inquired and found, by verdict or inquest of office, he shall have restitution of the goods so waived. 1 H. H. 541.

2. By the flatute of 21 H. 8. c. 11. Which statute introduced Restitution by a new law for restitution; for before this statute there was no rethe statute of flitution upon an indictment, but only upon an appeal: Which faid statute enacteth as follows;

Aaz

# Restitution of stolen goods!

If any felon do rob or take away any man's money or goods, and thereof be indicted, and arraigned, and found guilty, or otherwise attainted, by reason of ewidence given by the party robbed, or owner of the money or goods, or by any other by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods: and as well the justices of gaol delivery, as other justices before whom the felon shall be found guilty, or otherwise attainted, may award a writ of restitution, in like manner as if the felon were attainted on appeal.

Found guilty or otherwise attainted] By this it seems questionable, whether the party be intitled to restitution, upon the defendant's standing mute; in which case he is neither found guilty, nor otherwise attainted. 2 Haw. 332.

Or otherwise attainted If the owner prefers a bill of indictionent, which is found, and the felon flies, and is outlawed, the owner shall have restitution; for he gave evidence upon the indictment, which tho' it be not a conviction, is the ground of the outlawry, which is an attainder. 1 H. H. 545.

The party robbed, or owner] Therefore if the fervant be robbed of the master's money, or his servant by his procurement, give evidence, and convict the felon, the master shall have a writ of restitution, if it appear upon the indictment and evidence, that it was the master's money; for the statute gives restitution to the party robbed, or owner. 1 H. H. 542.

Or owner] If the testator is robbed, and the thief is convict upon the procurement of the executor; such executor shall have restitution: for this being a beneficial law, ought to be construed beneficially, so as to extend to executors and administrators. 3 Infl. 242.

Shall be reftored] If goods be stolen, and not waived in slight, nor seized by the king's officers, or lord of the manor, nor sold in open market, the owner may take them again, without any writ of restitution, or may bring his action for them; and this, altho' he doth not prosecute the offender. 2 Hazv. 168. Kely. 48.

And by the 31 El. c. 12. Where horfes are stolen, and fold in open market, and the owner claims them again within 6 months, and pays the buyer as much as they cost him, he shall have them again, without prosecution.

But otherwise, if the goods be waived by the selon in his slight, or in case they be not waived, yet if they be seized by the king's officers, or lord of the manor, as suspecting them to be stolen; there the party shall not have restitution, unless the selon be convicted at his prosecution. 2 Haw. 168. Kely. 49.

And in such case, he shall have no more than what is mentioned in the indictment, tho' other goods were stolen at the same time; and the reason is, because by such omission, the offender might have escaped. Kely. 49. I H. H. 545.

To fuch his money, or goods] A man stole cattle, and sold them in open market; the sheriff seized the thief and the money, and he was convicted and hanged at the prosecution of the owner of the

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er of the the cattle, and he had restitution of the money; for the statute gives power to the justices to award restitution of the money or goods stolen, and the the money in this case was not stolen, yet because it did arise by stealing, it shall be within the equity, the not in the very words of the statute. Noy 128.

But it hath been a great question, if goods be stolen, and by the thief fold in a market overt, whether the thief being convicted upon the evidence of the party robbed, he shall have reflitution upon this statute of the thing fold or not, the buyer not being privy to the felony: But Lord Hale argues strongly, that he shall have restitution, notwithstanding the sale in market overt of the goods stolen. 1. Because this act was made to incourage persons robbed, to pursue malefactors, and therefore they have an affurance of restitution; and it would be small encouragement, if a thief by fale in a market overt, which is every day almost in every shop in London, should elude it. 2. Because the man that is robbed, is robbed against his will, and cannot help it; but the buyer of stolen goods may chuse whether he will buy, or if he buy, may yet refuse to buy, unless well secured of the property of the goods, or knowing the owner. 1 H. H. 542, 3, 4. 2 Haw. 170. Kely. 48.

In like manner as if the felon were attainted on appeal] And yet, upon this statute, if the offender be convict upon the evidence of the party robbed, or owner, he shall have restitution, tho' there were no fresh suit, or any inquiry by inquest touching the same; and this is constant practice, tho' in case of an appeal it be otherwise. IH. H. 545.

Yet if it shall appear to the court, that the party hath been guilty of gross neglect in profecuting; it seemeth that in such case he shall not be intitled to restitution. 2 Haw. 171.

3. By course of the common law. If the owner takes his goods Restitution by again of the offender, to the intent to favour him, or maintain the common him, this is unlawful, and punishable by fine and imprisonment; lawbut if he take them again without any such intent, it is no offence. 1 H. H. 546.

But after the felon is convicted, it can be no colour of crime to take his goods again, where he finds them; because he hath purfued the law upon him, and may have his writ of restitution, if he please. 1 H. H. 546.

# Riot, rout, and unlawful affembly.

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I. What is a riot, rout, or unlawful affembly.

II How the same may be restrained by a private person.

III. How by a constable, or other peace officer.

IV. How by one justice.

V. How by two justices.

VI. How by process out of chancery.

I. What is a riot, rout, or unlawful affembly.

WHEN three persons or more shall assemble themselves together, with an intent mutually to assist one another, against any who shall oppose them, in the execution of some enterprize of a private nature, with force or wiolence, against the peace, or to the manifest terror of the people, whether the act intended were of it self lawful or unlawful; If they only meet to such a purpose or intent, altho' they shall after depart of their own accord, without doing any thing, this is an unlawful assembly:

If after their first meeting, they shall move forward towards the execution of any such act, whether they put their intended purpose in execution or not; this, according to the general opi-

nion, is a Rout:

And if they execute such a thing in deed, then it is a Riot. (A.) 1 Haw. 155. Dalt. c. 136.

Three persons or more] And therefore if the jury do acquit all but two, and find them guilty, the verdict is void, unless they be indicted together with other rioters unknown, because it finds them guilty of an offence, whereof it is impossible that they should be guilty; for there can be no riot, where there are not more persons than two. 2 Haw. 441.

And infants under the age of discretion are not persons within

this description, punishable as rioters. 1 Haw. 159.

Note: In 1 Haw. 156, 157, 158, the words more than three persons are three times over inserted instead of three persons or more; which is only remarked as an instance, that in a variety of matter, it is impossible for the mind of man to be always equally attentive.

Affemble themselves together] It seems agreed, that if a number of persons being met together at a fair, or market, or church ale, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those

who actually engage in it; because the design of their meeting was innocent and fawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it: Yet it is said, that if persons innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their sirst coming together had been on such a design. I Haw. 156.

In the execution of sime enterprize of a private nature] It seems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only; as the inclosing of lands, in which the inhabitants of a town claim a right of common, or gaining the possession of tenements the title whereof is in dispute, or such like matters relating to the interest or disputes of particular persons, and no way concerning the publick; for wherever the intention of such an assembly is to redress publick grievances, as to pull down all inclosures in general, or reform religion, and the like, it is high treason. I Haw. 157.

Against the peace, or to the terror of the people. It seems to be clearly agreed, that in every riot there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people; as the shew of armour, threatning speeches, or turbulent gestures; for every such offence must be laid to be done to the terror of the people: And from hence it clearly follows, that assembles at wakes, or other festival times, or meetings for exercise of common sports or diversions, as bull baiting, wrestling, and such like, are not riotous. I Haw. 157.

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And from the same ground also it seems to follow, that it is possible for three persons or more to assemble together with an intention to execute a wrongful act, and also actually to perform their intended enterprize, without being rioters; as if a man assemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for such purpose, altho' another man hath better right to the thing so carried away, and that this act be wrong and unlawful; yet it is of it self no riot, except there be withal threatning words used, or other disturbance of the peace. Dalt. c. 137. I Havo. 157.

Much more may any person, in a peaceable manner, assemble a meet company, to do any lawful thing, or to remove or cast down any common nusance: Thus every private man, to whose house or land any nusance shall be crected, made, or done, may in peaceable manner assemble a meet company, with necessary tools, and may remove, pull, or cast down such nusance, and that, before any prejudice received thereby; and for that purpose,

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# Riot, rout, &c.

if need be, may also enter into the other man's ground. Thus a man erected a wear cross a common river, where people have a common passage with their boats, and divers did assemble, with spades, crows of iron, and other things necessary to remove the said wear, and make a trench in his land that did erect the wear, to turn the water, so as they might the better take up the said wear, and they did remove the same nusance; this was holden neither any forcible entry, nor yet any riot. Dalt. c. 137.

But in the cases aforesaid, if in removing any such nusance, the persons so-assembled shall use any threatning words (as to say, they will do it tho' they die for it, or such like words) or shall use any other behaviour, in apparent disturbance of the peace, then it seemeth to be a riot; and therefore where there is cause to remove any such nusance, or to do any like act, it is the safest not to assemble any multitude of people, but only to send one or two persons, or if a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or cast down the same, and that such persons tend their business only, without disturbance of the peace, or threatning speeches. Dalt. c. 137.

Whether the act intended were of it self lawful or unlawful] It hath been generally holden, that it is no way material, whether the act intended to be done by such an assembly, be of it self lawful or unlawful; from whence it sollows, that if three or more perfons assist a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nusance, or other thing which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be done by them were never so unlawful. I Haw. 158.

# II. How the same may be restrained by a private person.

By the common law, any private person may lawfully endeavour to suppress a riot, by staying those whom he shall see engaged therein, from executing their purpose, and also by stopping others whom he shall see coming to join them. I Haw. 159.

### III. How by a constable or other peace officer.

By the common law, the sheriff, constable, and other peace officers, may and ought to do all that in them lies, towards the suppressing of a riot, and may command all other persons to assist therein. I Haw. 159.

#### IV. How by one justice.

By the 34 Ed. 3. c. 1. The justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offence; and cause them to be imprisoned and duly punished, according

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aft ma according to the law and custom of the realm, and according to that which to them shall seem best to do, by their discretions and good ad-

And this statute hath been liberally construed for the advancement of justice; for it hath been resolved, that if a justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail; but that he may also authorize others to arrest them, by a bare verbal command, without other warrant; and that by force thereof, the persons so commanded may pursue and arrest the offenders, in his absence, as well as presence. Also it is said, that after a riot is over, any one justice may send his warrant, to arrest any person who was concerned in it, and also that he may send him to gaol, till he shall find sureties for his good behaviour. 1 Haw. 160.

But it feems to be agreed, that no one justice hath any power by force of this statute, either to record a riot upon his own view, or to take an inquisition thereof after it is over: Also if one justice, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing himself, because no single justice is by this statute made a judge of the said offence. But if a riot shall be committed by persons armed in an unusual manner, contrary to the statute of Northampton, 2 Ed. 3. c. 3. and any one justice acting ex officio, in pursance of the said statute, seize the armour, and imprison the offender, and make a record of the whole matter, fuch a record cannot be traversed, because it is made by one acting in a judicial capacity. And for the same reason, if a justice proceeding on the statute of the 15 R. 2. against forcible entries and detainers, shall upon his own view record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed. Also if a justice acting as a judge by any statute whatsoever impowering him so to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such an uncontroulable credit to all matters of record, made by any judge of record as such, that it will never admit of an averment against 1 Haw. 160. the truth thereof.

But if the rioters are above the number of 12, the offence is greatly inhansed, and the power of one justice very much inlarged, by the act commonly called the riot act, 1 G. st. 2. c. 5. which is required to be read at every quarter sessions and leet: By which it is enacted, That every justice, sheriss, under sheriss, and mayor, shall on notice or knowledge of any unlawful, riotous, and tumultuous assembly of persons to the number of 12 or more, together with such help as he shall command, resort to the place. st. 2, 3.

Whereupon he shall, amongst the rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making; and after that, shall openly and with loud voice make or cause to be made proclamation in these words, or like in effect:

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Our sovereign lord the king chargeth and commandeth all persons being affembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful bufiness, upon the pains contained in the act made in the first year of king George for preventing tumults and riotous affemblies: God fave the king

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And if any person shall with force and arms wilfully oppose, hinder, or hurt any person that shall begin or go to make the proclamation, whereby the same shall not be made, he shall be

guilty of felony without benefit of clergy. J. 5 .-

And if any 12 or more of them shall continue together by the space of one hour after such proclamation made, or after such hindrance (having knowledge thereof), they shall be guilty of

felony without benefit of clergy. f. 1, 5.

And every justice, sheriff, under sheriff, mayor, high and petty constable, and other peace officer, and every other person of age and ability commanded by them to affift, shall apprehend the offenders, and carry them before a justice, to be proceeded against according to law. And if any rioters be killed or hart by any the faid persons in dispersing or apprehending them, by reason of

their refistance, such persons shall be indemnissed.

Also, if any rioters (altho' under the number of 12, and whether any proclamation be made or not) shall unlawfully and with force demolish or pull down, any church or chapel, or any build. ing for religious worship certified and registred according to the act of toleration, or any dwelling house, barn, stable, or other outhouse, they shall be guilty of felony, without benefit of clergy. f. 4. And any one justice may proceed against them, as against other felons.

And the hundred, city, or town, shall answer the damages

thereof, as in cases of robbery. f. 6.

Profecutions on this act, to be within 12 months after the offence. f. 8.

### V. How by two justices.

1. If any riot, assembly, or rout of people, against the law, be made; the justices, three, or two of them at the least, and the sheriff, or under sheriff, shall come with the power of the county,

13 H. 4. c. 7. f. 1.

And the king's liege people, being sufficient to travel, shall be assistant to them, upon reasonable warning, to ride with them in aid to resist such riots, routs, and assemblies; on pain of imprisonment, and to make fine and ransom to the king. 2 H. 5. c. 8.

If any riot, affembly, or rout of people, against the law, be made It is faid, that the justices are not only impowered hereby, to raile the power of the county to affift them, in suppressing a riot which shall happen within their own view or hearing, but also that they may fafely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any fuch riot in truth or not; for it may be dangerous for them to stay 07:5

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till they can get certain information of the fact: But they feem to be punishable for alarming the country in this manner, without some such probable ground of their proceeding, as would induce a reasonable man to think it necessary and convenient. I Haw.

Assembly] It seems clear from hence, that if the justices in going towards the place where they have heard that there is a riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof; for the statute extends to all other unlawful assemblies whatsoever as well as to riots. I Haw. 161.

The king's liege people] Except women, clergymen, persons decrepit, and infants under the age of fifteen. 1 Haw. 161.

To refist such riots] And also to arrest the rioters, and conduct them to prison. 1 Haw. 161.

2. And shall arrift them. 13 H. 4. C. 7. f. 1.

And if they shall escape, they may take them on a fresh pursuit; but they cannot at another time award any process against them on the record, but ought to send the record into the king's bench, that process may issue thereon from thence: Yet there seems to be no doubt, but that they may arrest them for their trespass on the aforesaid statute of the 34 Ed. 3. in order to compel them to find sureties for their good behaviour. I Haw. 162.

3. And the same justices and sheriff, or under sheriff, shall have power to record (B) that which they shall find so done in their presence against the law: by which record the offenders shall be convict in the same manner and form as is contained in the statute of forcible entries. (C) 13 H. 4. c. 7. s. 1.

Shall have power to record And this they may do, whether the offenders be in custody at the same time, or have escaped. 1 Haw. 161.

Shall be convited And it feemeth to be certain, that the record of a riot, expresly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great authority, that it can no way be traversed, however little ground of truth there might be to affirm, that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. I Haw. 162.

However it feemeth clear, that if in such a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters; because the justices have by this statute a judicial authority over no other offences, except riots, routs, and unlawful assemblies. I Haw. 162.

And inafmuch as such a record is a final conviction of the parties, as to all such matters as are properly contained in it, it ought

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to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; for since the parties are concluded from denying the truth of such a record, and have no other remedy to defend themselves against it, but only by advantage of the insufficiency of what is contained in it, they may justly demand the benefit of excepting to it, if it do not expressly shew, both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power given them by the said statutes: and from the same ground it seems also to follow, that such a record may be excepted against, if it do not appear to have been made by the sheriff or under sheriff in concurrence with the justices. I Haw. 162.

And this record ought to remain with one of the justices, and shall not be left amongst the records of the sessions, it being made out of sessions, and not appointed to be certified thither. Dalt.

In the same manner and form as is contained in the statute of forcible entries. That is, the statute of the 15 R. 2. c. 2. And hereupon it is said, that the offenders being under the arrest of the justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices, till they shall make fine and ransom to the king; which can be assessed by no other justices of the peace, except those by whom the record of the offence was made, 1 Haw. 162.

And this fine, Mr. Dalton says, the justices shall cause to be estreated into the exchequer, that so it may be levied to the king's use; and then they are to deliver the offenders again. Dalt. c. 82.

But Mr. Hawkins fays, that it hath been questioned, whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine; because it is enacted by the 2 H. 5. c. 8. that such rioters attainted of great and heinous riots, shall have one whole year's imprisonment at the least, without being let out of prison by bail or mainprize; and that the rioters attainted of petty riots, shall have imprisonment as best shall seem to the king or to his council. I Haw. 164.

4. And if the offenders be d parted before the coming of the said justices and sheriff or under sheriff, the same justices, three, or two of them, shall diligently inquire (D) within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land. 13 H. 4. c. 7.

The fame justices] It is generally said, that any justices of the county may take such an inquiry, whether they dwell near the place where the riot happened, or at a distance, or whether they went to view the riot or not; for the statute ought to be construed as largely as the words will bear, in savour of the justices power in the suppressing of such riots; and therefore those words in the statute that the same justices shall inquire, ought to be thus expounded,

expounded, that the same justices who were before impowered to raise the posse, shall inquire, and that is, any justices in the county. 1 Haw. 163.

Shall diligently inquire] That is, by a jury: In order to which, it is enacted by the 19 H. 7. c. 13. that the sheriff, on their precept directed to him, shall, on pain of 20 l. return 24 persons, whereof every of them shall have lands and tenements within the shire, to the yearly value of 20 s. of charter land or freehold, or 26 s. 8 d. of copyhold, or of both, over and above all charges: And he shall return upon every juror in issues, at the first day 20 s. and at the second 40 s.

Note; Charter land had its name from a particular form in the charter or deed, which ever fince the reign of H. 8. hath been

disused. 1 Inft. 6.

Within a month. That is, if they do not make inquiry within a month, they are punishable for the neglect; yet they may inquire after the month: for the lapse of a month doth not determine their authority, but only subjects them to a penalty. 2 Salk.

Shall bear and determine according to the law of the land ] And therefore they may award process under their own teste, against those who shall be indicted before them of any of the offences abovementioned, according to the form of this statute; and also may award the like process for the trial of a traverse of such an inquisition; and do all other things in relation thereunto, which are of course incident to all courts of record. 1 Haw. 163.

And the riot being fo found by inquisition, the justices must make a record thereof in writing of such their inquiry or prefentment found before them; which record also is to remain with

one of the justices. Dalt. c. 82.

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5. And if the truth cannot be found in the manner as is aforefaid, then within a month then next following, the justices, three,
or two of them, and the sheriff or under sheriff, shall certify before
the king and his council, all the deed and circumstances thereof;
which certificate shall be of like force as the presentment of 12
men; upon which certificate the offenders shall be put to answer,
and shall be punished according to the discretion of the king and his
council. 13 H. 4. C. 7. s. 2.

And if they do traverse the matter so certified, the certificate and traverse shall be sent into the king's bench to be tried. id. s. 3.

And if the offence be not found, by reason of any maintenance or embracery of the jurors, then the same justices and sheriff or under sheriff shall in the same certificate certify the names of the maintainers and embracers, with their misdemeanors. 19 H. 7. C. 13.

Shall certify] And it seemeth certain, that such certificate, being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and persons, and other material circumstances, both of the riot and maintenance. 1 Haw. 165.

# Riot, rout, &c.

Before the king and his council] It feems clear, by the council being here distinguished both from the chancery and king's bench, that the certificate ought to be made to the privy council board, and not to either of those courts, which in some statutes relating to judicial proceedings are taken for the king's council. I Haw. 165.

6. And the said justices and other officers shall execute their offices aforesaid at the king's costs, in going and continuing in doing their said offices, by payment thereof to be made by the sheriff by indentures betwixt the said sheriff and justices, and other officers aforesaid, whereof the sheriff upon his account in the exchequer shall have due allowance. 2 H. 5. c. 8.

In order to the defraying of which, the said statute directs the fines of the offenders to be inlarged; and thereout the sheriff may pay the charges of the said justices; and of the jury, that is, for their diet; and the sheriff's fees, and the like. Dalt. c. 82.

7. And the justices dwelling nighest in the county, where such riot, assembly, or rout shall be, together with the sheriff or under sheriff, shall do execution of the said statute of the 13 H. 4. every one upon pain of 1001. to the king. f. 4.

The justices dwelling nighest Altho' these only are liable to this penalty, yet if any others on notice shall neglect to supply their default, they are sineable at discretion. 1 Haw. 166.

But if any justices, who do not dwell nearest to the place, do actually execute the statute, they excuse all the rest. 1 Haw. 165.

Dwelling nighest in the county] Therefore if they dwell nighest, but in another county, they are not in danger of this penalty.

1 Haw. 165.

Shall do execution of the said statute That is, in the whole, and not in part only; as by recording a riot, and not committing the parties. I Haw. 166.

#### VI. How by process out of chancery.

By the 2 H. 5. c. 8. If default be found in the two justices, sheriff, or under sheriff, then at the instance of the party grieved, a commission shall be issued under the great seal, to inquire as well of the truth of the case for the complainant, as of such default.

And by the 2 H: 5. c. 9. and 8 H. 6. c. 14. Rioters shall be taken by writ and proclamation cut of chancery, on suggestion of two justices and the sheriff, of the common same of such riot.

#### A. Indictment for a riot.

Westmorland. THE jurors for our lord the king upon their oath present, that O. A. late of the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ yeoman, B.O. late of the same, yeoman, C.O. late of the same, yeoman, and divers other persons (to the jurors aforesaid as yet unknown) on the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_\_ at the parish aforesaid, in the county aforesaid, with force and arms, unlawfully, riotously,

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to eve Wh we di and routoufly did affemble and gather together, to disturb the peace of our said lord the king; and so being then and there affembled and gathered together, in and upon one A.I. in the peace of god and of our said lord the king then and there being, unlawfully, riotously, and routously did make an assault, and him the said A.I. then and there unlawfully, riotously, and routously did beat, wound, and ill treat, and other wrongs to the said A.I. then and there unlawfully, riotously, and routously did; to the great damage of the said A.I. and against the peace of our said lord the king, his crown and dignity.

#### B. Record of a riot on view.

Westmorland. DE it remembred, that on the in the - year of the reign of - We J. P. and K. P. esquires, two of the justices of our said lord the king, assigned to keep the peace in the said county, and A.S. knight, sheriff of the said county, at the complaint and request of A. I. of - in the county aforesaid, yeoman, in our proper persons have come to the mansion house of him the said A. I. - aforesaid, and then and there do find A.O. of yeoman, B. O. of \_\_\_\_\_ yeoman, C. O. of \_\_\_\_ yeoman, and other malefactors and disturbers of the peace of our said lord the king to us unknown, to the number of 11 persons, in a warlike manner arrayed, to wit, with clubs, swords, and guns unlawfully, riotously, and routously assembled, and the same bouse besetting, many evils against him the said A. I. threatning, to the great disturbance of the peace of our said lord the king, and terror of his people, and against the form of the statute in that case made and provided. And therefore we the aforesaid J. P. K. P. and A. S. the aforesaid A.O. B.O. and C.O. do then and there cause to be arrested, and to the next gool of our said lord the king in the county aforefaid to be conveyed, by our view and record of the unlawful assembly, riot, and rout aforesaid convicted, there to remain every and each of them respectively, until they shall severally and respectively have paid to our said lord the king the several sum of 101. each, which we do impose upon them and every of them separately for their said offence. In testimony whereof, to this our present record we do put our seals. Dated at aforesaid, the day and year aforesaid.

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### C. Commitment of the rioters upon view.

Westmorland. P. and K.P. esquires, two of the justices of our lord the king, assigned to keep the peace within the said county, and A.S. knight, sheriff of the said county; To the keeper of the gaol of our said lord the king at in the said county, and to his deputy and deputies there, and to every of them, greeting.

Whereas upon complaint made unto us by A. I. of \_\_\_\_\_ yeoman, we did this present .\_\_\_\_ day of .\_\_\_\_ go to the house of the said A. I. at \_\_\_\_ aforesaid, and there did see A. O. of \_\_\_\_

yeoman,

# Riot, rout, &c.

- yeoman, C.O. of ycoman, B. O. of -- yeoman, and other malefactors to us unknown, affembled together in an unlawful. routous, and riotous manner, to the terror of the people, and against the peace of our Said lord the king, and against the form of the statute in that case made and provided: We do therefore send you, by the bringers bereof, the bodies of the said A. O. B. O. and C. O. convicted of the Said riot, rout, and unlawful affembly, by our own view, testimony, and record; commanding you in the name of our said lord the king, to receive them into the said gool, and them and every of them respectively there safely to keep, until they and every of them shall respectively pay to our said lord the king, the several and respective sum of 101. each, which we have set and imposed upon them, and each and every of them separately for the said offence. Given under our hands and seals at aforesaid, in the county aforesaid, the day and year aforesaid.

### D. Precept to fummon a jury.

Westmorland. J. P. and K. P. efquires, two of the justices of our lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, To the sheriff of the said county, greeting. On the behalf of our said lord the king we command you, that you cause to come before us at - in the county aforesaid, on the - day of ensuing, 24 honest and lawful men of the county aforesaid, every one of which to have lands and tenements within the said county to the yearly value of 20 s. of charter land or freehold, or of 26 s. 8 d. of copyhold, or of both, over and above all charges, to inquire for our said lord the king, and for our indemnity in this behalf, upon their oath, of certain riots, routs, and unlawful affemblies, - in the county aforesaid, lately committed, as it is said; And that you return upon every person so by you to be impanelled 20 s. of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premisses at the said time and place. And this you shall in no wife omit, on pain of 201. Given under our hands and feals at aforesaid, in the county aforesaid, the - day of - in the - year of the reign of -

### Jurors oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a riot, rout, and unlawful assembly said to have been lately committed at \_\_\_\_\_\_\_ in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.

be given to you: So help you god.

The oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts:

So help you god.

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The inquisition, indictment or presentment of the within say and road, to lar jury. hear have and midney

Westmorland. A N inquisition for our lord the king, indented and taken at — in the county asoresaid, the — day of — in the — year of the reign of by the oath of - honest and lawful men of the county aforesaid, before J. P. and K. P. esquires, justices of our said lord the king, assigned to keep the peace in the said county, and also. to hear and determine divers felonies, trespasses, and other misdemeanors in the faid county committed, who say upon their oath aforesaid, that A.O. of - yeoman, B.O. of yeoman, C.O. of --- yeoman, together with other malefactors and disurbers of the peace of our said lord the king, to the jurors aforefaid as yet unknown, on the - day of - now last past, at - aforefaid, in the county aforefaid, with force and arms, to wit, with clubs, swords, and guns, unlawfully, routously, and riotously did assemble, to disturb the peace of our said lord the king; and so being then and there affembled and gathered together, the mansion bouse of A. I. yeoman, at \_\_\_\_\_ aforesaid, unlawfully, routoufly, and riotoufly did enter, and in and upon him the said A. I. then and there unlawfully, routously, and riotously did make an assault, and him the said A. I. then and there unlawfully, routously, and riotously did beat, wound, and ill treat, in disturbance of the peace of our said lord the king, and to the terror of his. people, and against the form of the statute in such case made and provided.

We whose names are bereunto Set, the abovesaid jurors, do find this inquisition true;

We the justices above said do bereby impose the fines bere under written, on the abovesaid offenders;

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# Rivers and navigation.

1. B Y the 8 G. 2. c. 20. If any person shall wilfully or ma-Destroying locks liciously pluck up, throw down, or otherwise destroy any and sluices. lock, fluice, floodgate, or other works on any navigable river, erected by authority of parliament; he shall be guilty of felony without benefit of clergy: And the hundred shall answer damages, not exceeding 20 /.

VOL. II.

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2. And

# Rivers and navigation.

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2. And by the 19 G. 2. c. 22. If any person acting as master of a ship, shall cast out, or there shall be cast out, of any vessel being within any haven, road, channel, or navigable river, any ballast, or rubbish, but only on the land where the tide never comes; any one justice near the place, may summon the master or owner, or other person acting as such, against whom the information shall be made, or iffue his warrant to bring him before him; and upon due proof made, either by confession of the party offending, or on view of fuch justice, on oath of one witness, that any ballast or rubbish hath been cast out, the master, or perfon acting as fuch, shall be adjudged the offender, and shall forfeit not above 51. nor under 50 s. half to the informer, and half to the poor of the parish or place where such conviction shall be pronounced: To be levied by diffress of the goods of the person fo convicted, or of the ship or tackle; and the same, if not redeemed in 5 days, to be fold, rendring the overplus if any be, after demand in writing, charges of diffress and sale being first deducted. For want of fufficient distress, to be committed to gaol or to the house of correction where the conviction shall be, for two months, or till payment of the penalties, or so much thereof for which the commitment shall be.

And as foon as any veffel shall be funk, stranded, or run ashore, in any harbour, channel, or navigable river, or be brought in, or be there in a shattered condition, and permitted to remain there, and the owner or master shall begin to take down, or carry away any of the rigging or tackle, or if there shall not be any person to take care of such vessel; any one justice for the county or place, or near which fuch fact shall happen, shall on information thereof fummon the owner, or other person having or pretending to have the command thereof, or iffue his warrant to bring him before him; and on conviction shall issue his warrant for seizing and removing such vessel, and also the rigging, and tackle thereof, in such manner as he shall order and direct; if such person shall not within 5 days give fatisfactory fecurity to the justice, to clear the harbour of fuch veffel, and of all wreck and parts thereof, and pay the charges of feizing, removing, and disposing of the vessel and furniture, then the justice shall cause the hulk and tackle to be fold, and with the money pay the charges of clearing the place where the vessel shall lie, and of seizing, removing, and selling the fame, rendring the overplus to the owner of the manor where

the fame shall happen.

3. By the 24 G. 2. c. 45. All persons who shall feloniously steal any goods of the value of 40 s. in any ship, boat, or vessel, on any navigable river, or in any port of entry or discharge, or from any wharf or key, or shall be present and aiding therein, shall be excluded from the benefit of clergy.

Stealing goods on a navigable river.

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# Robbery.

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II. Widening of bigbways to prevent robberies.

III. Affaulting with intent to rob.

IV. Levying bue and cry on a robbery committed.

V. Hundred when liable to answer damages.

VI. Manner of bringing the action against the hun-

VII. Damages how to be levied and applied.

VIII. Reward for apprehending a robber.

IX. Pardon for discovering an accomplice.

X. Principal and accessary in robbery.

XI. Punishment of robbery.

XII. What shall be done with the goods of which a person is robbed.

#### I. What it is.

HERE are two kinds of robbery; from the person, Two kinds of and from the bouse: It is the former of these that is robbery. treated of under this title; the latter, viz. robbery from the house, belongeth to the titles Larreng and Burglary.

2. Robbery, Lord Coke fays, is derived from the French de la Derivation of robe, both because they bereave the true man of his robes, and also the word robfor that his money is taken by them from some part of his gar-bery. ment, or robes about his person. But in truth the word seemeth to be much ancienter than the introduction of the French into our language; and probably was deduced unto us through the channel of Saxony or Denmark. Robber, in the Saxon is reofere; in the Low Dutch, roover; in the Danish, roffeure; by a transmutation of the letters b, f, and v, frequent in all kindred languages. The Gothick translation of the gospels useth biraubodeaun to fignify they robbed, from birauban, to rob; which being stripped of the prefix augmentative is rauban. The Saxons expressed the same by bereafodon, which we still preserve when we say they bereaved: and in the northern parts of England, the words robbing and reaving are still used promiscuously to signify rapine and plunder; and when the violent winds do strip a house of its thatch or covering, it is called reowing.

3. Robbery is a felony by the common law, committed by a vio- Definition of lent affault upon the person of another, by putting him in fear, and tobbery.

# Robbery.

taking from his person, his money or other goods, of any value what. soever. 3 Inst. 68.

From his person] Taking a thing in a man's presence, is in law a taking from the person. Hale's Pl. 73. Str. 1015. K. against Francis and others.

Thus, if one take or drive my cattle out of my pasture, in my presence, this is robbery, if he make an assault upon me, or put me in fear. Hale's Pl. 73.

### II. Widening of highways to prevent robberies.

Wood near highWays. Highways leading from one market town to another, shall be enlarged, so that there be neither dyke, tree, nor bush, except ashes or great trees, whereby a man may lurk to do hurt, within 200 foot of each side. And if by default of the lord, that will not avoid the dyke, underwood, or bushes, any robberies be done, the lord shall be answerable for the selony; and if murder be done, the lord shall make a sine at the king's pleasure. And if a park be taken from the highway, it shall be set at 200 foot distance; or else a sence shall be made, so as offenders may not

pass nor return to do evil. 13 Ed. 1. s. 2. c. 5.

It is observable, that when this act was made, the country was fuller of wood than it is at present.

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If any person shall with any offensive weapon affault, or by menaces, or in any forcible or violent manner, demand any money or goods, with a selonious intent to rob him, he shall be guilty of selony, and be transported for 7 years. 7 G. 2. c. 21.

Killing a person z. If any person be indicted, or appealed, for killing any person to rob. fon attempting to rob, he shall be acquitted. 24 H. 8. c. 5.

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Hundred shall answer.

1. The hundred where the offence was committed, shall be answer.

fwerable for the robberies, and for the damages, if the offender be not taken. 13 Ed. 1. st. 2. c. 2. 28 Ed. 3. c. 11.

Hundred neglect- 2. But such hundred may recover back half the damages, from ing hue and cry, any other hundred where fresh suit after hue and cry shall not be shall contribute. made. 27 El. c. 13. s. 2.

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5. Likewise if any person, which shall travel upon the lord's Nor if on the day, shall be then robbed, the hundred shall not be liable : never lord's day. theless they shall make hue and cry, on pain of forfeiting to the king as much as might have been recovered against the hundred, if the robbery had not been on the lord's day. 29 C. 2. c. 7.

Which shall travel M. 7 G. Testimaker against the hundred of Edmington. The plaintiff lived a mile from the church, and going thither with his lady in his coach upon a Sunday, was robbed; and brought his action against the hundred, and recovered; for the statute extends only to the case of travelling: but Pratt Ch. J. faid, if they had been going to make vifits, it might have been otherwise. Str. 406.

6. Also, if any man be robbed in his house, the hundred shall Nor if it be in not be charged therewith, whether it were done by day or night; an house. because every man's house is his castle, which he ought to defend; and if any one is robbed in his house, it shall be esteemed his own

Dalt. c: 84:

7. Also, a robbery done in the night, shall not charge the hun- Nor if it be in dred; but yet if it be in the day time, or there be so much day the night. light as that one may fee a man's face, so that the robber may be known, tho' it be before the fun rifing, or after the fun fetting, the hundred shall answer for it. Dalt. c. 84.

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to robbed.

9. And by the yearly land tax acts, no receiver general, or In what cafe any of his agents employed for carrying any money on account three in comof the faid tax, shall maintain an action against the hundred for be- pany. ing robbed, unless the persons carrying such money, be together in company, and be in number three at the least.

#### VI. Manner of bringing the action against the hundred.

In order to make the hundred liable, these things following must be done:

1. The person robbed shall, with as much convenient speed as may Notice to the be, give notice thereof, unto some of the inhabitants near the place. inhabitants

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And tho' that place, where notice is given, be in another hundred or county, yet it is good enough; for a stranger may not know the confines of the hundred or county: and that hundred where notice is given must make hue and cry, and by that means

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# Robbery.

the hundred where the robbery was committed will foon know thereof. Cro. Ca. 41, 379. 3 Salk. 184.

Notice to a con-

2. He shall also give notice, with as much convenient speed as may be, to a constable of the hundred, that is, the high constable, or to a constable of some place near; or leave notice in writing at his bouse, describing therein the felon, and the time and place of the robbery. 8 G. 2. C. 16. 1.

M. 16 G. 2. Ball against the hundred of Wymersley. Upon a case made at the affizes, it was stated, that soon after fix in the morning, the plaintiff was robbed at two miles and a half distance from Northampton, and the highwayman cut his bridle and stirrups, threw them into a ditch, and turned his horse loose; that the plaintiff recovered them, remounted, rode through a village called Cotton, where he gave no notice, met three men on the road whom he informed of the robbery, and arrived at Northampton by seven o'clock, and gave notice to an innkeeper there, from whence he went to Rotherthorpe, three miles off, where the high constable lived, and between 8 and 9 gave notice. And whether this notice was sufficient to maintain the action, was the question. And the court on argument held it to be good notice, for the high constable is the properest person to go to, and it is not required that he go to the next constable. It appears the plaintiff lost no time, confidering the circumstances he was in; and Rotherthorpe is not at fuch a distance, but that it may come within the meaning of the word near. So the plaintiff had judgment. Str. 1170.

And every constable, to whom such notice shall be given, and every high and petty constable within the hundred, as soon as the same shall come to his knowledge, by the party robbed, or by any to whom such notice hath been given, shall with the utmost expedition make and cause to be made fresh suit and hue and cry after the selons, on pain of 5 l. with costs, half to the king, and half to him who shall sue. 8 G. 2. c. 16. f. 11, 12. Note; the penalty here is but small; but as the not pursuing hue and cry was also an offence at common law, the offender may be indicted at

the common law, and thereupon fined and imprisoned.

3. The party robbed shall also, within 20 days, cause notice to be given in the gazette (A) describing therein the selon, and the time and place of the robbery, and the goods and effects

whereof he was robbed. 8 G. 2. c. 16. f. 1.

4. He shall also be examined on oath (B), within 20 days next before the action brought, before a justice in or near the hundred, whether he knows any of the robbers: and if he confesses that he does, he shall before the action brought, he bound over by the said justices to prosecute. 27 El. c. 13. s. 11.

He fooll aifo be examined] That is, the party robbed, who is to bring the action, shall be examined. But here note a diversity. T. 2 Car. Raymund and hundred of Oking. The fervant was robbed of his master's goods, and the servant made oath before a justice, and the master brought the action against the hundred. By the court; The action well lies for the master; and the servant's oath is sufficient, for it was properly in his notice, that he

To be examined on oath.

Notice in the

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was robbed, and did not know any of the robbers, and the master knows it not that he was robbed, or who were the persons, but by report of his servant; and it would be inconvenient, if the master should not bring the action, but the servant only; for the servant might release, or compound, or discontinue the suit, and so the master should have the loss by his fallhood: therefore the master shall bring the action, and have his servant who was robbed, to be his wimess. Cro. Car. 37.

Within 20 days next before] And the time of making such oath must be laid in the declaration, for that is traversable. 3 Salk.

Before a justice] And if the justice shall refuse upon his request, to examine him, an action will lie against the justice; because he doth not act therein as a judge of record, but as a minister appointed for the examination by the statute. Cro. Car. 211.

Whether be knows any of the robbers] H. 19 G. 2. William King against the hundred of Bishop's Sutton. In an action brought against the hundred, the oath proved was, that he had good reason to suspect the fact was done by Robert Gibbs and William Langford, both of And a doubt arising at the affizes, whether this fuch a parish. was fufficient or not, a cafe was made, and twice argued at the bar. And upon the second argument, the court were of opinion, that the examination did not maintain the action. The oath required is a condition precedent, and for the fake of the hundred, and to prevent screening the offenders. There is a great deal of difference between suspecting and knowing: a man who knows the offender may purposely stop at the word suspect; to avoid being bound to profecute: and though it would be equivocating, yet it would hardly be perjury affignable; it being only a suppression of part of the truth. He should have said, I suspect them to be the men, but I do not know it. It will be dangerous to let them go out of the words of the act; and therefore the plaintiff failed in the action, and paid the costs of a non-suit. Str. 1247.

5. Also before the action be commenced, he shall go before Bond to pay the chief clerk, or secondary, or the filazer of the county, or the costs. clerk of the pleas of that court wherein such action is intended to be brought, or their deputies, or before the sheriff of the county, and enter into 100 l. bond, to the high constable, with two sufficient sureties, to pay him costs, if he (the prosecutor) shall be cast. And no greater see shall be taken for the bond, than 5 s. above the stamp. 8 C. 2. c. 16. f. 1, 2.

6. If bond is taken before the sheriff, he shall immediately cer-Bond to be tify the same in writing, to the respective officer abovementioned; certified, which certificate the person robbed shall deliver to such officer before the action is brought: and he shall pay not more than 2 s. 6 d. see to the sheriff for making such certificate, nor more than 2 s. 6 d. to the officer for receiving and sling the same. And the bond shall be delivered to the high constable gratis. 8 G. 2. c. 16. f. 2.

7. All this being done, and 40 days being expired from the Time of bring-day of the publication in the gazette (for if one of the offenders ing the action.

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is apprehended within that time, the action will not lie, 8 G. 2 c. 16 f. 3.); and also a whole year not being expired from the time of the robbery committed (for if a year is expired, in fuch case also the action will not lie, by the 27 El. c. 13. f. 9.) But all there things being regularly and duly performed, then the action may be brought.

Process to be ferved on the high constable.

8. And the process shall be served on the high constable only; who shall cause publick notice thereof to be given in one of the principal market towns on the next market day; and if there is no market town in the hundred, then in some parish church within the hundred, on the next Sunday, immediately after divine fer-He shall also enter appearance, and defend the action, as he shall be advised. 8 G. 2. 6. 16. f. 4.

be witnesses.

9. On the trial; any inhabitant may be a witness for the hundred. 8 G. 2. c. 16. f. 15.

#### VII. Damages how to be levied and applied.

Writ of execution to be shewn to two justices.

And the high eonftable's charge.

Taxation.

Payment.

High conflable if the plaintiff is caft.

Return of the writ.

1. If the plaintiff recover, the sheriff shall shew the writ of execution to two justices (12.) in or near the hundred. 27 El.

c. 13. f. 5. 8 G. 2. c. 16. f. 4.

2. The high constable also shall cause his attorney's bill to be taxed by the proper officer, and shall give in to the said justices an account thereof, and of his other expences in defending the action, and make due proof of the same upon oath, to the satisfaction of the faid justices. 8 G. 2. c. 16. f. 4.

3. The faid two justices shall thereupon cause a taxation to be made, and levied in 30 days, upon every division within the hundred, by the conitables, by diffress and sale. 8 G. 2. c. 16. J. 4, 10.

4. And the constables shall in ten days pay the same to the sheriff, and the sheriff shall pay the same without fee to the plaintiff for his colls and damages, and to the high constable for his expences. 8 G. 2. c. 16. f. 4, 5.

5 The high constable shall in like manner, if he recovers to be reimbursed, against the plaintiff, be reimbursed his expences which shall be over and above the costs to be taxed, and also such costs taxed as he shall not be able to recover, by reason of the insolvency of the plaintiff and of his furcties; which shall be paid in ten days to the faid two justices, or one of them, who shall upon request deliver over the same to the high constable. 8 G. 2. c. 16. J. 7, 8.

6. And the sheriff shall not be obliged to return the writ of execution, till after 60 days from the time it shall be delivered to him; that there may be time for the taxation, affestment, and collecting the money. 8 G. 2. c. 16. f. 6.

#### VIII. Reward for apprehending a robber.

Tol. by the hun-1. Any person or persons apprehending a felon, whereby the dred. hundred becomes indemnified, shall have 10 1 reward paid by the hundred; the same to be ascertained, levied, and paid, by two Juffices (1 2.) in or near the hundred, in such proportions as they shall think reasonable, within the hundred. 8 G. 2. c. 16.

2. And moreover, every person who shall apprehend a high- 401. by the wayman, and profecute him till he be convicted of any robbery king. committed in or upon any highway, passage, field, or open place, shall have from the sheriff of the county where the robbery and conviction was made and done, without paying any fee for the fame, the sum of 40 l, within one month after such conviction and demand thereof made, by tendring a certificate to the sheriff, under the hand of the judge, certifying the conviction of fuch felon for a robbery done within the county of the faid sheriff, and also that such felon was taken by the person claiming the reward. 4 W. c. 8. f. 2.

For which certificate shall be paid, for writing and drawing

thereof, 5s. and no more. 6G. c. 23. f. 8.

And if any dispute shall arise between the persons apprehending, touching their right to the reward, the judge shall by the faid certificate direct it to be paid unto and amongst the parties claiming. in such proportions as to him shall seem just and reasonable. if the sheriff shall make default of payment, he shall forfeit double, with treble costs 4 W. c. 8. f. 2.

e, with treble costs 4 W. c. 8 f. 2.

And the streets of London and Westminster, and of other cities, towns, and places, shall be deemed highways as to this matter.

6G. c. 23. J. S.

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3. And as a further reward, such person shall have moreover And the goods the horse, furniture, and arms, money, or other goods of the taken with the robber, that shall be taken with him, notwithstanding the right of highwayman. the king, or lord of the manor, or of the person lending or letting the same to hire: but saving the right of them from whom they

may have been feloniously taken. 4 W. c. 8. f. 6.

4. And if a person is killed in endeavouring to apprehend such Person killed in highwayman, the sheriff shall pay the like sum of 40 l. without apprehending a fee, under the like penalty, to the executors or administrators of the person killed; immediately, upon certificate delivered to him under the hand and feal of the judge of affize for the county where the fact was done, or the two next justices, of such person being so killed: Which certificate, the faid judge, or justices, upon proof before them made, shall give immediately without fee. 4 W. c. 8. f. 3.

5. And the sheriff shall have the said rewards allowed to him in Sheriff to be alhis accounts. 4 W. c. 8. f. 4. lowed the reward in his accounts.

IX. Pardon for discovering accomplices.

If any person, being out of prison, shall commit any robbery, Pardon for difand afterwards discover two or more persons, who shall commit covering accomany robbery, fo as two or more be convicted; he shall have the plices. king's pardon for all robbesies he shall have committed before such discovery; which pardon shall be likewise a bar against any appeal for such robbery. 1 W. c. 8. s. 7.

#### X. Principal and accessary in robbery.

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Acceffary.

All that come in company to rob, are principals, tho' one only actually do it. Hale's Pl. 72.

#### XI. Punishment of robbery.

Clergy.

Pardon.

Navy.

1. Robbery is generally excluded from the benefit of clergy. 3 Inft. 68. 2 Haw. 351-357. 2 H. H. c. 48.

2. And by the 20 G. z. c. 52. Robbery is excepted out of the

general pardon.

3. By the 22 G. 2. c. 33. Robbery in the navy shall be punished with death, or otherwise, as a court martial, on consideration of circumstances, shall find meet.

Restitution of goods taken by robbery.

# XII. What shall be done with the goods of which a person is robbed.

1. If the person robbed doth not prosecute the robber; if his goods are waived in slight, or seized by the king's officers, or lord of the manor, he shall not have them restored. Kely. 49.

2. But if they are not waived in flight, nor feized by the king's officers, or lord of the manor, he may take his goods again wherever he finds them, without the formality of reftitution being swarded, if they be not fold in open market; and this also, altho' he doth not prosecute the robber. Kely. 48.

3. But if he shall prosecute the robber to conviction; he shall have restitution, altho' they have been waived, and seized, and

even fold in open market. Kely. 48.

A. Notice in the gazette, before the action brought against the hundred.

Made in the eighth year of the reign of his present majesty king George the second, intitled, An act for the amendment of the law relating to actions on the statute of hue and cry) that A. I. of \_\_\_\_\_ in the county of \_\_\_\_\_ gentleman, on \_\_\_\_\_ the \_\_\_\_ day of \_\_\_\_ now last past, between the hours of eight and nine in the forenoon of the same day, was overtaken and robbed by two persons, in the highway between \_\_\_\_ and \_\_\_ in the county of \_\_\_\_ one of them being a tall thin man, marked on the same with the small pox, and having on a brown riding coat, and mounted on a black mare; the other a middle sized man, wearing his own hair of a light brown colour, and riding on a grey gelding; which persons took from him the said A. I. ten guineas in gold, seven shillings in silver, an halfpenny, and a silver watch, and then made off.

B. Examination of the person robbed, before the action brought.

Westmorland. THE examination of A. I. of \_\_\_\_\_\_ in the county aforesaid, yeoman, taken on oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, dwelling in [or, near to] the hundred of \_\_\_\_\_ within the said county, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_\_ Who saith that are Morday the \_\_\_\_\_ day of this trasfert would

Taken, made, and figned the day and year above written,

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Rout. See Kiot. Rum. See Ercife. Run goods. See Ercife.

Sabbath. See Lord's day.

# Sail cloth.

Py the 9 G. 2. c. 37. (which by the 24 G. 2. c. 52. hath continuance to Dec. 25. 1757, &c.) every maker of British fail cloth, shall stamp his name and place of abode in words at length on every piece; on pain of 10 l. on conviction by the oath of one witness before one justice: And if any person shall wilfully obliterate

# Sail cloth.

obliterate the stamp, or stamp another person's name and place of abode, and not his own, he shall forfeit 5 /. (and by the 4 G. 2. c. 27. 10 /) to the informer; by distress, by warrant of two justices.

Sacraments. See Publick worthip. Sacrilege. See Larceny, Burglary. Salmon. See Game. Salt. See Ercife.

# Sanduary.

B Y the 21 7. c. 28. f. 7. No fanctuary, or privilege of fanctuary, shall be admitted or allowed in any case.

# Scavengers.

THE justices in any city or market town (not having already provision made for them therein by any former law), at their general or quarter sessions, may appoint scavengers for cleaning the streets, and may order the repairing such streets therein as they shall judge necessary; and for defraying the chages thereof, an affession not exceeding 6 d. in the pound for one year, may be made, levied, and collected as by their order in such sessions they shall appoint; which, being allowed under their hands and seals, may (if not paid in 8 days after demand) be levied by their warrant by distress, rendring the overplus, after deducting the charges of making, keeping, and selling such distress. I G. st. 52. st. 9. 9 G. c. 18. st. 3.

There are several acts which direct the paving and cleaning the streets in London and Westminster, and within the bills of mortality, which not being of general concern, are only mentioned in this place; to wit,

22 C. 2. c. 12. 22 & 23 C. 2. c. 17. 2 W. feff. 2. c. 8. 8 & 9 W. c. 37.

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### Javenning, fall Le Schoolmasters.

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ONE shall teach school, unless allowed by the bishop, Licence of on pain of the censures of the church: And curates schoolmasters. defirous to teach, shall be licensed before others, except where there is a publick school founded. Can. 77, 78.

2. How far schoolmasters, being protestant dissenters, are ex- Dissenters teachempted, as fuch, from the penalties inflicted by the laws for ing without teaching school without licence, is treated of under the title licence.

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3. If any papift shall keep school, or take upon him the edu- Papift teaching cation, or government, or boarding of youth, he shall be ad school. judged to perpetual imprisonment. 11 & 12 W. c. 4. f. 3.

4. Where a schoolmaster, in correcting his schoolar, happens to Schoolmaster by occasion his death; if in such correction he is so barbarous as to correction kilexceed all bounds of moderation, he is at least guilty of man- ling his scholar. flaughter; and if he make use of an instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder. 1 Hazv. 73, 74.

### Seamen.

OR apprentices to the sea service, see title Apprentices. 1. No listed seaman shall be taken out of his majesty's In what cases fervice, by any process, other than for some criminal matter, un- they may be arless affidavit be first made, that the debt or damage amounts to rested. 201. IG. 2. ft. 2. c. 14. f. 15.

But the plaintiff may, on notice first given to the defendant, enter a common appearance, and proceed to judgment and outlawry, and have execution other than against his body. f. 16.

2. No court martial may punish or try any offence committed What offences by any feaman in his majesty's fervice, which shall not be com. the court martial mitted on the main sea, or in great rivers beneath the bridges, or may punish. in a haven or creek within the jurisdiction of the admiralty; except in the case of spies, or of mutiny and desertion, or disobedience, or of offences committed on land in foreign countries. 22 G. 2. c. 33. f. 40.

3. Seamen who have been employed in the king's service fince Where they may the accession of King George the second, and not deferted, may exercise trades. let up and exercise such trades as they are apt for, in any town or place in Great Britain or Ireland, without molestation (except in "Oxford or Cambridge); and if any person is sued thereupon, and the plaintiff is cast, such person shall have double costs. 22 G. 2. c. 44.

4. A

Convicted of fwearing.

4. A feaman, instead of being committed to the house of correction, for default of paying the penalty for swearing, shall be put in the stocks for one hour for every single offence, and for any number of offences of which he shall be convicted at one and the same time, two hours. 19 G. 2. c. 21. f. 5.

In what case not to be deemed vagrants.

justice of the peace, setting forth the time and place of landing, and the place to which he is to pass, and limiting the time of his passage, shall not be deemed a vagrant, while he continues in the direct way, and within the time limited. 17 G. 2. c. 5. f. 3.

In what case not to gain settlements by notice.

6. No feaman employed in his majesty's service, shall have any fettlement in any parish, port town, or other town, by delivery and publication of a notice in writing, unless it be after his dismission out of his majesty's service. 3 W. c. 11.

Making diffurbance in the yards.

7. The treasurer, controller, surveyor, clerk of the acts, or any of the commissioners of the navy, may punish seamen and others, making disturbances in the yards or offices, and may bind them to the good behaviour, and to appear at the next affizes, or general quarter sessions, to be prosecuted for such offence. 1 G. st. 2. c. 25. st. 1, 2.

Seamen in the merchants fervice. 8. Concerning seamen in the merchants service, it is enacted by the 2 G. 2. c. 36. (which by the last continuance 23 G. 2. c. 26. is of force to March 25. 1764, &c.) No master of a ship shall proceed on a voyage, without agreement in writing with each mariner (apprentices excepted), to be signed by such mariner, for wages; on pain of 5 l. for each mariner, on conviction before one justice by the oath of one witness, to be levied by distress; for want of distress, to be committed till paid. f. 1, 2.

And if the mariner deferts after he hath figned the agreement, he shall forfeit the wages due to him at the time of deferting; and on application from the master, owner, or commander of the ship, such justice may cause him to be apprehended, and if he shall refuse to proceed on the voyage, without sufficient reason to the satisfaction of the justice, the said justice shall commit him to the house of correction, there to be kept to hard labour, not exceed-

ing 30 days, nor less than 14 days. f. 3, 4.

And if any seaman absent himself from his ship without leave, he shall forfeit for every day's absence two days pay to Greenwich hospital, to be deducted by the master out of his wages; the same to be entred in a book, and signed by the master and two officers of the ship; and the same to be paid over to the officer who collects the 6 d. a month deducted out of seamens wages for the said hospital. f. 5, 9.

And if any feaman not entring into the king's fervice, shall leave his ship before he hath a discharge in writing, he shall forfeit

one month's pay, in like manner. f. 6.

And the mafter shall pay the seaman's wages, if demanded, in 30 days after the ship is entred at the custom house, or at the time of discharge, which shall first happen, deducting out of such wages the aforesaid forseitures; on pain of 203. to such seaman, to be recovered in like manner as his wages. f. 7.

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Note; The law relating to the recovery of such wages, so far as provision is made for the same by any act of parliament, is treated of under title Serbants.

# Search Warrant.

A L'THO' it is not unusual for justices to grant general warrants, to search all suspected places for stolen goods, and there is a precedent in Dalton requiring the constable to search all such suspected places as he and the party complaining shall think convenient; yet such practice is generally condemned by the best authorities.

Thus Lord Hale, in his pleas of the crown, fays, a general warrant to fearch for felons or stolen goods, is not good.

H. Pl. 93.

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Mr. Hawkins fays, I do not find any good authority, that a juffice can juffify fending a general warrant, to fearch all suspected houses in general for stolen goods: because such warrant seems to be illegal in the very face of it; for it would be extremely hard, to leave it to the discretion of a common officer, to arrest what persons, and search what houses he thinks sit; and if a justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill it up, surely he cannot grant such a general warrant, which might have the effect of an hundred black warrants. 2 Hago. 82, 84.

Again, Lord Hale, in his history of the pleas of the crown, expresseth himself thus; I do take it, that a general warrant to search in all suspected places is not good; but only to search in such particular places, where the party assigns before the justice his suspicion, and the probable cause thereof; for these warrants are judicial acts, and must be granted upon examination of the

fact. 2 H. H. 150.

And therefore, he fays, he takes it that those general warrants dormant, which are many times made before any felony committed, are not justifiable, for it makes the party to be in effect the judge; and therefore searches made by pretence of such general warrants, give no more power to the officer or party, than what

they may do by law without them. 2 H. H. 150.

Likewise, upon a bare surmise, a justice cannot make a warrant to break any man's house, to search for a selon, or for stolen goods; for the justices being created by act of parliament, have no such authority granted to them by any act of parliament; and it would be full of inconvenience, that it should be in the power of any justice of the peace, being a judge of record, upon a bare suggestion to break the house of any person, of what state, quality, or degree soever, either in the day or night, upon such surmises. 4 Inst. 177.

# Search Warrant.

But in case of a complaint, and oath made, of goods stolen, and that the party suspects the goods are in such a house, and shews the cause of his suspected places mentioned in his warrant, and to attach the goods, and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them, and further to abide such order as to law shall appertain. 2 H. 113, 150.

But in that case, Lord Hale says, it is convenient, that such warrant do require the search to be made in the day time; and tho' I will not affirm (says he) that they are unlawful without such restriction, yet they are very inconvenient without it; for many times under pretence of searches made in the night, robberies and burglaries have been committed, and at best it creates great disturbance. 2 H. H. 150.

But in case not of probable suspicion only, but of positive proof, it is right to execute the warrant in the night time, lest the offenders and goods also be gone before morning. Barl. Search

Furthermore, such warrant ought to be directed to the constable, or other publick officer, and not to any private person; tho it is sit the party complaining should be present and assistant, because he knows his goods. 2 H. H. 150.

So much for granting a fearch warrant; Next touching the execution of it.

Whether the stolen goods are in the suspected house or not, the officer and his assistants in the day time may enter, the doors being open, to make search, and it is justifiable by this warrant. 2 H. H. 151.

If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods be in the house, the of-

ficer may break open the door. 2 H. H. 151.

If the goods be not in the house, yet it seems the officer is excused, that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there, till search made; but it seems the party that made the suggestion is punishable in such case; for as to him the breaking of the koor is in eventu lawful or unlawful, to wit, lawful if the goods are there, unlawful if not there 2 H. H. 151.

On the return of the warrant executed, the justice hath these

things to do :

As touching the goods brought before him, if it appear they were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hand of the sheriff or constable, to the end the party robbed may proceed, by indicting and convicting the offender, to have restitution. 2 H. H. 151.

As touching the party that had the custody of the goods; if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as

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a witness against him that fold them; if it appear he was knowing they were stolen, he must be committed or bound over to answer the selony. 2 H. H. 152.

Form of a fearch warrant.

Westmorland. { To the constable of \_\_\_\_\_.

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WHEREAS it appear to me J. P. esquire, one of the ju-flices of our lord the king, assigned to keep the peace in the faid county, by the information on oath of A. I. of \_\_\_\_ in the county aforesaid, yeoman, that the following goods, to wit, have within true days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away, out of the house of the said A. I. at - aforesaid, in the county aforesaid; and that the faid A. I. bath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling - in the faid county, yeoman: These are bouse of A. O. of therefore, in the name of our faid lord the king, to authorize and require you, with necessary and proper affiftants, to enter in the day time into the said house of the said A. O. at - aforesaid, in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said A.O. before me, or some other of the justices of our said lord the king, asfigned to keep the peace in the county aforefaid, to be disposed of and dealt withal according to law. Given under my band and feal at - in the faid county, the -- day of - in the - year of the reign of -

> Self defence. See homicive. Self murdet. See homicide.

### Serbants.

Under this title are also comprehended labourers, journeymen, artificers, and other workmen.

Concerning the fettlement of servants, see title 2002.

I. Who may be compelled to ferve, and for what term.

II. Rating of wages.

III. Time of working for labourers.

Vol. II. Cc IV. Working

IV. Working in barvest.

V. Leaving work unfinished.

VI. Testimonial.

VII. Servant fleeing into another shire.

VIII. Servant affaulting bis master.

IX. How far the master is allowed to beat his servant.

X. How far the master may beat another in defence of his servant, or the servant in defence of his master.

XI. Servants firing bouses.

XII. Servant stealing his master's goods.

XIII. Disputes between filk masters and their workmen.

XIV. Disputes between clothiers and their workmen.

XV. Disputes between masters and servants in the woollen, linen, fustian, cotton, and iron manufactures, by several statutes.

XVI. Disputes between masters and their workmen in the leathern manufactures, by the 13 G. 2. C. 8.

XVII. Disputes between masters and their workmen in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silken manusactures, by the 22 G. 2. C. 27.

XVIII. Disputes between masters and their workmen in the manufacture of clocks and watches,

by the 27 G. 2. C. 7.

XIX. Disputes between masters and servants in busbandry, artificers, bandicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, by the 20 G. 2. C. 19.

XX. Shipmasters and their seamen.

XXI. Taylors and their workmen within the bills.

XXII. Shoemakers and their workmen within the bills.

XXIII. How far the master is answerable for the servant.

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### I. Who may be compelled to serve, and for what term.

1. O person shall retain, or be retained, to work for any Who compellaless term than one whole year, in any of the crafts of ble to ferve in clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, sheremen, dyers, hosiers, taylors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, sadlers, spurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow head makers, butchers, cooks, or millers. 5 E'. c. 4. J. 3.

And every person unmarried, and every married person being under the age of 30 years, and having been brought up in any of the faid trades, or that hath used any of them by the space of 3 years or more; and not having an effate of inheritance or for life of 40s. a year, nor worth 10 l. in goods, and fo allowed by two justices of the county where he hath most commonly inhabited for one year, under their hands and feals, or by the mayor of a town corporate and two aldermen, or (if there are no aldermen) two discreet burgesses; nor being retained with any person in husbandry, nor in any the aforesaid trades; nor being lawfully retained in houlhold, or in any office with any nobleman, gentleman, or other according to law; nor having a convenient farm or other holding in tillage; --- shall during the time that he shall be so unmarried, or under the faid age of 30 years, on request made by any person using the art or mistery wherein the said person hath been exercised, be retained and serve, on pain as hereaster followeth. J. 11.

And no person which shall retain any servant, shall put away his faid fervant, and no person retained according to this statute shall depart before the end of his term, unless it be for some reafonable cause, to be allowed before one justice or mayor to whom the party grieved shall complain: And no master shall put away any such servant at the end of his term, nor shall any such servant depart at the end of his term without one quarter's warning, on

pain hereafter ensuing. J. 5, 6.

2. Every person between the age of 12 and 60, not being In husbandry. lawfully retained, nor apprentice with any fisherman or mariner haunting the feas; nor being in service with any kidder or carrier of corn, grain, or meal for provision of the city of London; nor with any husbandman in husbandry; nor in any city, town corporate, or market town, in any the arts limited by this statute to have apprentices; nor being retained by the year, or half year at least; for getting, melting, fining, working, trying, making of any filver, tin, lead, iron, copper, stone, sea coal, stone coal, moor coal, or cherk coal; nor being occupied in the making of glass; nor being a gentleman born, nor being a student or scholar in any of the universities, or school; nor having an estate of inheritance, or for term of life, of 40 s. a year; nor worth 10 l. in goods; nor having a father or mother then living, or other anceltors, whose heir apparent he is, having lands of 101. a year, or goods worth 40 l.; nor being a necessary or convenient officer Ccz

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### Berbants.

or fervant lawfully retained as aforesaid; nor having a convenient farm or holding, whereon to employ his labour; nor being otherwise lawfully retained according to the true meaning of this state,—— shall be compelled to be retained to serve in husbandry by the year, with any person that keepeth husbandry, and will require any such person so to serve, within the same shire where he shall be so required.

feit 40 s. f. 8.

Penalties. 3. Ai

And the forfeitures not otherwise appointed by this act, shall be half to the king, and half to him that shall sue in any of the king's courts of record, or before the justices of over and terminer, or before any other justices before remembred; and the said justices, or two of them (12.) and the said mayors or other head officers, shall have power to hear and determine all offences against this statute, as well upon indictment in the sessions of the peace, as upon information, action of debt, or bill of complaint; and shall yearly in Michaelmas term estreat the forseitures into the ex-

thequer, in like manner as other estreats. f. 39.

And all fines and forfeitures which shall arise by reason of any offences in this act, within any city or town corporate, shall be levied by such person as shall be appointed by the mayor or other head officer, to the use of the same city or town corporate, as

other fines and forfeitures by the charter. J. 45.

Women compel-

4. Two justices (or the mayor or other head officer of a town corporate, and two aldermen, or two discreet burgesses if there be no aldermen) may appoint any such woman as is of the age of 12 years, and under 40, and unmarried, and forth of service, as they shall think meet, to serve, or be retained to serve by the year, or by the week or day, for such wages, and in such reasonable sort and manner as they shall think meet; and if any such woman shall resule so to serve, they may commit her to ward,

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ing of ditchi yard, labour until the shall be bounden to serve as is aforesaid. 5 El. c. 4.

And if a woman who is a servant shall marry, yet she must ferve out her time, and her husband cannot take her out of her master's service. Dalt. c. 58. Wood 89.

5. If a person retain a servant generally, without expressing Retainer to be any time, the law shall construe it to be for one year, for that re- for a year.

tainer is according to law. 2 Inft. 42.

And if a man retaineth another, except the retainer be according to the statute, it seemeth to be void; unless it be by indenture, and then being by deed, he is bound by his covenant. Dalt. Old

6. By the retainer, the servant is in service presently by the Retainer is the beginning of ferlaw, altho' he cometh not into his master's service indeed. Dalt. vice,

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ward. until 7. If a servant be within age, his agreement with his master to Infant hiring.

his disadvantage shall not prejudice him. Dalt. c. 58.

8. If a married man and his wife do bind themselves to serve, Married person they shall be compelled to serve according to their covenant or hiring.

agreement. Dalt. r. 58.

9. If a servant retained for a year, happen within the time of Servant falling his service to fall sick, or to be hurt or disabled by the act of god, sick. or in doing his master's business; yet the master must not therefore put such servant away, nor abate any part of his wages for such time. Dalt. c. 58.

### II. Rating of Wages.

1. The justices of every shire, riding, and liberty, or the Rating wages. more part of them, being then refiant within the fame, and the theriff if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any justice of the peace within the limits of the faid city or town corporate, and of the faid corporation, shall yearly at Easter sessions, or within 6 weeks next after, affemble, and call unto them such discreet and grave persons as they shall think meet, and having respect to the plenty or scarcity of the time, and other circumstances, shall have authority to limit, rate, and appoint the wages as well of such the said artificers, handicraftsmen, husbandmen, or any other abourer, servant, or workman, whose wages in time past have been by any law or statute rated and appointed, as also the wages of all other labourers, artificers, workmen, or apprentices of hufbandry, which have not been rated, as they shall think meet by their discretions, to be rated, limited, or appointed by the year, or by the day, week, month, or otherwise, with meat and drink, or without meat and drink, and what wages every workman or labourer shall take by the great, for mowing, reaping, or threshing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, pearch, lugg, yard, pole, rope, or foot, and for any other kind of reasonable labour or service. 5 El. c. 4. s. 15.

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And by the 1 F. c. 6. The justices, or the more part of them, resiant in any riding, liberty, or division, where the sessions are severally kept, shall have power to rate the wages within such division, as if the same were done in the general sessions for the county. f. 5.

And by the same statute of 1 J. c. 6. The said act of 5 El. shall extend to the rating of wages of all labourers, weavers, spinsters, and workmen or workwomen whatsoever, either working by the day, week, month, year, or taking any work by the

great or otherwise. f. 3.

But no clothier being a justice of the peace in any precinct or liberty, shall be a rater of wages for the making of cloth; and if there be not above two justices in such precinct, but such as are clothiers, the wages shall be rated by the major part of the common council of such precinct, and such justices (if any there be) as are not clothiers. id. f. 9.

And if any justice resiant within the county, or mayor, shall be absent at the rating of wages, and not hindred by sickness or other lawful cause, to be allowed by the justices then assembled for rating of wages, upon the oath and affidavit of some credible person, he shall forseit to the king 10% to be recovered in the sessions or other court of record, by indicament or otherwise. 5 E/.

And the justices shall yearly, between Sep. 29. and Dec. 25. and between March 25. and June 24. make special and diligent enquiry of the good execution of this statute, and punish defaulters; and shall have for every day that they sit about the execution thereof (not exceeding 3 days at a time) 5 s. each, out of the forseitures

due to the king. [ 37, 38.

2. By the aforesaid act of 5 El. the rates were to be certified into the chancery; but by the 1 J. c. 6. they need not to be certified into the chancery, but shall be kept amongst the records of the county or town corporate. f. 8.

And after the faid rates are made and ingroffed in parchment, under the hands and feals of the persons having authority to rate the same, the sheriff, or mayor, may cause proclamation thereof to be made, in so many places as to them shall seem convenient; and every person shall be bound to observe the same. id. f 6.

3. If any person upon the proclamation published, shall directly or indirectly, retain or keep any servant, workman, or labourer, or shall give any more or greater wages, or other commodity, than shall be so appointed in the said proclamation; he shall on conviction before any of the justices or other head officers above remembred, be impresoned for ten days without bail, and shall forfeit 5%, half to the king, and half to him that shall sue before the said justices in their sessions 5 El. c. 4. s. 18.

But yet masters may reward a well deserving servant, over and above his wages, according as he shall deserve, so it be not by way of promise or agreement upon his retainer. Dalt. c. 58.

4. And every person that shall be so retained and take wages contrary to the said statute of the 5 El. or to the said proclamation, and shall be thereof convicted before the justices aforesaid.

Rates to be proclaimed.

Giving more than is rated.

Taking mere.

er any two of them, or before the mayor or other head officers aforefaid, he shall be imprisoned for 21 days without bail. 5 El. c. 4. f. 19.

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5. And every retainer, promife, gift, or payment of wages, Contract to the or other thing, contrary to the faid act, and every writing and contrary, voids bond to be made for that purpose, shall be void. 5 El. c. 4.

6. If any clothier, or other, shall refuse to pay so much wages Paying less than to their weavers, spinsters, workmen, or workwomen, as shall be is rated. rated; and be convicted thereof by confession, or oath of two witnesses, at the assizes, or sessions, or before any two justices (12); he shall forseit to s. to the party grieved, to be levied by distress and sale. If c. 6. f. 7.

7. M. 1 An. 2. and Gouche. An order was made by the ju-Ordering the fixes for payment of wages, for work and labour in husbandry: payment of The exception was, That it did not appear to be statute wages, wages, and such only are within their jurisdiction. By the court; Tho' the statute gives them a power only to set the rate for wages, and not to order payment; yet grafting hereupon, they have also taken upon them to order payment, and the courts of law are indulgent in remedies for wages, and therefore they would intend it such wages as were within the statute, unless the contrary appear upon the face of the order. 2 Salk. 441.

And in the case of K. and Gregory, 2 Salk. 484. There was an order to pay 40 s. for wages generally; and because it was not said for wages in husbandry, it was moved to quash it, for that the justices can only settle wages in husbandry: But by the court; We will intend it for such wages, since the contrary does not appear.

But in the case of K and Helling, M. 3 G. There was an indictment for not paying servants wages, reciting an order of two justices, whereby it appeared, that 9 l. was due, which the defendant resused to pay, having had notice of the order. It was moved to quash the indictment, because it doth not set out the labour of the servant, and is only generally for wages; the justices have only jurisdiction in case of husbandry; and the order ought to shew, that this was a matter within their jurisdiction. By Eyre J. the practice is, if an order be for paying wages, it is supposed to be such as the justices have power over. But Parker Ch. J. and Pratt J. were of another opinion. And in the next term following the indictment was quashed. Str. 8.

And in the case of K. and Cleg, M. 8 G. It was said by Fortescue J. that in the case of servants wages, although jurisdiction is given only in husbandry, yet orders have been held good, where it did not appear that the service was in husbandry; for the court said they would intend it so, unless the contrary appeared. But by Pratt Ch. J. This was always wondred at, and in my lord Parker's time it was actually contradicted in the case of K. and Helling. Str. 475.

In Bycraft's case, 5 Mod. 140. A justice made an order for payment of a seaman's wages; but in an action brought against him, the plaintiff recovered 30% damages.

Cc 4

M. 8

### Serbants.

M. 8 An. Q. and Cecill. An order upon a master to pay wages in husbandry, was quashed, because it was made upon the servant's oath, which is against law, and no power given in the sta-

tute to admit such oath as evidence. L. Raym. 1305.

But by other statutes hereaster following, such oath is allowed as evidence; but upon this statute it was not necessary, because in order to intitle the servant to wages, he needed not to prove how much his master had agreed to pay him, for that was fixed by the justices, but only how long he had served, and then the wages followed of course; and this might be proved by many others as well as by himself.

#### III. Time of working for labourers.

All artificers and labourers, being hired for wages, by the day, or week, shall betwixt the midst of March and September, be and continue at their work, from 5 in the morning till after 7 at night (except in the time of breakfast, dinner, or drinking, which shall not exceed two hours and an half in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep, when he is allowed to sleep, that is, from the midst of May to the midst of August, half an hour at the most, and at every breakfast one half hour:) And all the said artificers and labourers, between the midst of September and the midst of March, shall be and continue at their work, from the spring of the day in the morning, until night, except it be in the time afore appointed for breakfast and dinner; on pain to forseit 1 d. for every hour's absence, to be deducted out of his wages. 5 El. c. 4 f. 12.

#### IV. Working in barvest.

1. In the time of hay or corn harvest, the justices of the peace, and every of them, and also the constable or other head officer of every township, upon request, and for avoiding of the loss of any corn, grain, or hay, shall cause all such artificers and persons as be meet to labour, by the discretions of the said justices or constables, or other head officers, or by any of them, to serve by the day, for the mowing, reaping, shearing, getting, or inning of corn, grain, and hay, according to the skill and quality of the person; and that none of the said persons shall resuse to do, on pain to suffer imprisonment in the stocks, by the space of two days and one night: And the constable of the town, or other head officer, on complaint to him made, shall fet him in the stocks aecordingly, on pain of 40 s. half to the king, and half to him that shall sue in the sessions, or other court of record; and if it is in a town corporate, then to the use of such town, as other fines by the charter. 5 El. c. 4. f. 22.

Provided, that all persons of the counties where they have accustomed to go into other shires for harvest work, and having at that time no harvest work sufficient in the same town or county where they dwelt in the winter last past, bringing with them a testimonial under the hand and seal of one justice of the shire, or

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other head officer of the town or place that they come from, testifying the same, for which he shall pay not above 1 d. (other than such persons as shall be retained in service) may repair, in harvest of hay or corn, into any other county or place for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harvest works, as they might have done before the making of this act. f. 23.

2. And by the 13 & 14 C. 2. c. 12. A person may go abroad to work in harvest, carrying with him a certificate from the minister and one churchwarden or overseer, that he hath a dwelling house or place in which he inhabits, and hath left wise and children, or some of them there (or otherwise as his condition shall require) and declaring him an inhabitant there. f. 3.

And by the vagrant act of the 17 G. 2. Persons carrying with them such certificate, shall not be liable to be apprehended as vagrants.

### V. Leaving work unfinished.

Every artificer and labourer, that shall be lawfully retained in and for the building or repairing of any church, house, ship, mill, or other piece of work taken in great, in task, or in gross, or that shall take upon him to make or finish any such work, shall continue and not depart from the same, unless it be for not paying of his wages or hire agreed on, or otherwise lawfully taken or appointed to serve the king, or for other lawful cause, or without licence of the master or owner of the work, or of him that hath the charge thereof, before the missing of the said work, on pain of imprisonment for a month without bail or mainprise, and the forseture of 5 1. to the party from whom he shall so depart, for the which the said party may have his action of debt in any of the king's courts of record, over and besides such ordinary costs and damages as may or ought to be recovered by the common laws, for such offence. 5 El. c. 4. s. 13.

And no other artificer or labourer, retained in any fervice, to work for the king, or any other person, shall depart from his said majesty, or from such other person, until the work be sinished, if the person so retaining the artificer or labourer so long will have him, and pay him his wages; on pain of imprisonment for one

month. J. 14.

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### VI. Testimonial.

None of the said persons retained in husbandry, or in any the arts above remembred, after the time of his retainer expired, shall depart forth of one city, town, or parish, to another; nor out of the lathe, rape, wapentake, or hundred; nor out of the county where he last served, to serve in any other city, town corporate, lathe, rape, wapentake, hundred, or county; unless he have a testimonial under the seal of the said city or town corporate, or of the constable or other head officer, and of two other honest housholders of the city, town, or parish where he last served: Which testimonial shall be in this form,

Memorandum,

# Berbants.

Memorandum, That A. B. late ferwant to C. D. of E. huf. bandman, or taylor, &c. in the faid county, is licensed to depart from his faid master, and is at his liberty to serve elsewhere, according to the statute in that case made and provided. In witness whereof, &c. Dated the day, month, year, and place, &c. of the making thereof:

Which testimonial shall be delivered to the said servant, and also registred by the minister of the parish where the master dwells,

taking 2 d. for the same. 5 El c 4. f. 10.

And no person that shall depart out of a service, shall be retained or accepted into any other service, without shewing (before his retainer) such testimonial, to the chief officer of the town corporate, and in every other town and place, to the consable, curate, churchwarden, or other head officer; on pain that every such servant so departing without such testimonial, shall be imprisoned till he procure one; which if he cannot do in 21 days, he shall be whipped and used as a vagabond, according to the laws in such case provided; and every person retaining such servant, without shewing such testimonial, shall forfeit 5 l. half to the king, and half to him that shall sue in the sessions or other court of record; and if any such person be taken with a counterfeit testimonial, then to be whipped as a vagabond. f. 11.

By the common law, if a man retained another man's fervant, not knowing that he was retained with him, this ignorance excufed him of the offence; but now the master may, and must take notice, whether he hath a testimonial or no; otherwise, if he hath no testimonial, such master is liable by this statute to the penalty

of 51. Dr. & St. 149.

And it were to be wished, that this good law concerning the testimonial were enforced and put in due execution; the want whereof is the only adequate cause of the excessive dearness and insolence of servants which is now so universally complained of; because it renders all rating of wages utterly vain and inessectual; for if the wages are limited in one shire, the effect of that is no more than driving the servants into another shire where the wages are not rated: which can only be prevented by a general concurrence in not suffering them to depart, or not receiving them, without such licence or testimonial.

### VII. Servant fleeing into another shire.

If any fervant of husbandry, or of any art, science, or occupation aforesaid, slee into another shire, it shall be lawful for the justices of the peace, and the said mayors or other head officers being justices of the peace, to issue writs of capias, directed to the sheriffs of the counties, or other head officers of the places whither he shall slee, to take his body, returnable before them at what time shall please them; so that if they come by such process, they be put in prison till they shall find sufficient surety well and honestly to serve their masters. 5 El. c. 4. s. 47.

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And by the 24 G. 2. c. 55. If a justice shall issue a warrant against such person, and he shall escape into another shire; the constable or other person, on having the warrant indorsed by a justice in such other shire, may arrest him there, and carry him before a justice in such other shire, if the offence is bailable, to find bail, or else shall carry him back before a justice in the shire from whence the warrant did sirst issue.

## VIII. Servant affaulting his master.

If any fervant, workman, or labourer, shall wilfully or maliciously make an affault or affray upon his master or mistress, or upon any other having charge or overfight of such servant or labourer, or over the work wherein he is hired to work, and shall be thereof convicted before any two justices, or other head officer aforesaid, by confession, or oath of two witnesses, he shall be imprisoned for a year, or less, by the discretion of two justices out of a town corporate, and in a town corporate of the mayor or other head officer with two others of the discreetest persons of the same corporation: And if the offence shall require further punishment, then to receive such other open punishment so as it extend not to life or limb, as the justices in fessions, or the mayor or other head officer, and fix or four at least of the discreetest perions of the corporation, shall think convenient for the quality of the offence. 5 El. c. 4, f. 21.

### IX. How far the master is allowed to beat his servant.

The master is allowed by law, with moderation to chastise his servant. Dalt. c. 58.

And where a master, in correcting his servant, happens to occasion his death, it shall be deemed homicide by misadventure; yet if in his correction he be so barbarous, as to exceed all bounds of moderation, and thereby occasion the servant's death, it is manslaughter at the least; and if he make use of an instrument improper for correction, and apparently indangering the servant's life, as an iron bar, or sword, or kick him to the ground, and then stamp on his belly and kill him, it is murder. I Haw. 73,

And if the servant shall depart out of his master's service, and the master happen after to lay hold of him, yet the master in this case may not beat or forcibly compel his said servant against his will to return or tarry with him, or do his service; but either he must complain to the justices, for his servant's departure, or he may have an action of covenant against his servant. Dalt. c. 121.

X. How far the master may beat another in defence of his servant, or the servant in defence of his master.

According to some opinions, a master shall not forfeit a recognisance of the peace, for beating another in defence of his servant, nor the servant for beating another in defence of his master, 1 Haw. 131.

But in the case of *leeward* and *Basilee*, M. 7 W. It was held by the court, that a servant may justify an assault in desence of his master, but not a master in desence of his servant; because he might have an action for the loss of his service. I Salk. 407.

### XI. Servants firing bouses.

If any menial or other servant, thro' negligence or carelessies, shall fire or cause to be fired any dwelling house or out house, and be convicted thereof by oath of one witness, before two justices, he shall forfeit 100 l. to the churchwardens, to be distributed amongst the sufferers by such fire; and if he shall not pay the same immediately, on demand of the churchwardens, he shall be committed by the said justices to some workhouse or house of correction for 18 months, there to be kept to hard labour. 6 An. c. 31. f. 3.

### XII. Servant stealing bis master's goods.

By the 21 H. 8. c. 7. If any servant to whom any goods shall by his mester or mistress be delivered to be kept, shall go away therewith, to the intent to steal the same; or, being in his master or mistress's service, without his or her assent, shall imbezil or otherwise convert the same to his own use, with like purpose to steal it, if the same he of the value of 40 s. or above, he shall be guilty of selony; but this not to extend to any apprentice, or any person within the age of 18 years.

By bis master or mistress.] If the master's wife deliver goods of the master, to the servant to keep, and he goes away with them, it seems this is within the statute, for he hath them by delivery of his mistress; and the master's wife is as well his mistress, as if the were sole. 1 H, H. 668.

Be delivered to be kept] This statute was introductive of a new law, when the goods were actually delivered to the servant that goes away with them; for where there is such a delivery, it could not at the common law be a selony. 1 H. H. 667.

But yet a servant may be guilty of selony at common law, if he take the goods of his master seloniously, nay, tho' they be goods under his charge, as a shepherd, butler, and the like; and for this he may be indicted at this day as a selony at common law: and of this selony at common law an apprentice, or servant under the age of 18 years, may be guilty, and indicted thereof at common law. 1 H. H. 667.

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And therefore tho' this statute exempt an apprentice or servant under 18, from the pain of selony enacted de novo by this statute, namely, where goods are actually delivered to him, yet it leaves him in the same condition as to any selony at common law, as if he were not excepted; and therefore if a butler or shepherd, under the age of 18 years, or if an apprentice take away his matter's goods seloniously, without an actual delivery, tho' they are under the value of 40s. he is indictable of selony at common law. 1 H. H. 667, 668.

If a man delivers to his fervant the key of his chamber door, and the fervant taketh away his master's goods in the chamber (above the value of 12 d.) this is felony at the common law, for the goods were not delivered. Dalt. c. 155.

If a man appoints his fervant to take and carry corn to market, and to take his horse to carry the same upon, and the servant goeth away with the corn or horse; this is felony in the servant, if the goods he so goeth away with, be all to the value of 40 s.

But if the fervant wastefully consumeth the goods, and returneth again to his master, this is no felony. Dalt. c. 155.

If the master deliver an obligation to his servant, to receive the money thereby due, and the servant receive the money, and goeth away with the same, with intent to steal it; this is no offence within this statute, because he had not the money of the delivery of his master. 3 Inst. 105.

So if the master deliver to his servant wares or merchandizes to sell, and he selleth the same, and goeth away with the money as before, this is no offence within this statute for the cause aforesaid. 3 lnst. 105.

So if the fervant receiveth above 40 s. of his mafter's rents, and run away therewith, it is no felony; for the statute is, where the master delivereth it to keep. Dalt. c. 155.

But it is held, that if the mafter deliver to the fervant 20% in filver, to change it into gold at the goldsmith's, or leather to make shoes, and he run away with the gold or shoes, it is felony. 1 H. H. 668.

Shall be guilty of filony] But not without benefit of clergy. But by the 12 An. ft. 1. c. 7. Every person who shall steal goods to the value of 40 s. out of any dwelling house, altho' it be not broken open, shall be guilty of selony without benefit of clergy: But this not to extend to apprentices under 15 years of age.

And in Joshua Cornwall's case, M. 4 G. 2. it was acjudged, that a servant may be guilty of burglary with respect to his master's goods, although he did not break and enter, nor take, nor carry the goods away. Which was thus: The servant in the night opened the street door, and let in the thief, and shewed him the side board, from whence he took the plate; then the servant opened the door, and let him out, but did not go out with him, but went to bed. Upon the trial it was doubted, whether this was burglary in the servant, he not going out with the other; wherefore it was ordered to be found specially. And afterwards at a

meeting

meeting of all the judges at Serjeants-Inn, they were all of opinion that it was burglary in both. And upon report of this opinion the next fessions, the defendant was executed. Str. 881.

### XIII. Disputes between silkmasters and their workmen,

1. By the 13 & 14 C. 2. c. 15. Every filk winder and doubler, who shall unjustly, or deceitfully and falsly purloin, imbezil, pawn, sell, or detain any part of silk delivered to them to wind or double, in every such case, as well the winder or journeyman so offending, as the buyer and receiver thereof, being lawfully convicted, by confession, or oath of one witness, before one justice (or mayor), shall render to the party grieved such satisfaction for his damage and loss and charges, as the justice shall order.

But no more damages shall be given, than the party grieved shall prove he is damnified, and hath expended; and if the party shall not be able, or do not make recompence in 14 days after conviction, he shall for the first offence be apprehended and whipped, or set in the stocks where the offence was committed, or in some market town near, in the said county; and for the second offence, to incur the like, or such further punishment by whipping or being put in the stocks, as such justice shall think convenient. J. 7.

2. And by the 20 C. 2. c. 6. If any filk winder or doubler shall be found faulty, in unjustly, deceitfully, or falsly purloining, imbezilling, pawning, selling, or detaining any filk committed to his trust; any justice, or mayor, shall immediately on conviction by confession, or oath of one witness, commit him to prison or house of correction, till satisfaction be given to the party wronged, or punishment inslicted as by the 13 & 14 C. 2. is appointed.

3. And by the 8 & 9 W. c. 36. Every person that shall embezil, pawn, sell, or detain any silk delivered to him to be wrought, or after it is wrought up, and also the receiver and buyer thereof, or such as take the same to pawn, shall be subject to all the penalties of the 13 & 14 C. 2. c. 15. and the 20 C. 2. c. 6.

### XIV. Disputes between clothiers and their workmen.

1. By the 4 Ed. 4. c. 1. Clothmakers shall pay to the carders, and spinsters, and other labourers, their wages in money and not in goods, and deliver wool to them to be wrought according to the due weight thereof; on pain of forfeiting treble value of the wages, and for every delivery of excessive weight 6 d. f. 5.

And every carder, spinster, weaver, fuller, thearman, and dyer shall duly perform his duty in his occupation, on pain of double damages to the party grieved. f. 6.

And every justice of the peace, mayor, master, warden, baihiff, portreve, constable of hundred, and steward of leet, may hear and determine the same, and commit the offender to the And fend titled processing with this

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next gaol, till the faid duties, forfeitutes, and damages be paid. And any person not grieved may inform; in which case, the offender shall forfeit to the king, or to such person as shall be intitled to sines or amerciaments, 3 s. 4 d. And they may grant like process, as justices of the peace may do for surety of the peace, without any see to be taken for the execution of their offices in this behalf. f. 6.

2. By the 7 J. c. 7. Every forter, carder, kember, spinster. and weaver, who shall unjustly, falsly, or deceitfully convey, imbezil, purloin, fell, or detain any part of the wool or yarn delivered by any clothier, maker of bays, fays, or by any other perfon making such cloths or stuffs, and also the buyer and receiver thereof, knowing the same, being thereof convicted by confesfion, or oath of one witness, before two justices, or before the mayor and one of the aldermen or most substantial persons of a town corporate, shall make such satisfaction for damages, as the faid justices or chief officers shall appoint; and if the offender shall not by them be thought sufficient, or do not make such fatisfaction, he shall for the first offence be apprehended and whipped, or fet in the stocks where the offence is committed, or in some market town near in the same county; and for the second offence, shall incur the like or such further punishment by whipping, or being put in the stocks, as the said justices or chief officers shall think convenient. 1. 2.

And every spinner that shall receive any wool to be spun into yarn, for any clothier dwelling in Cogshall, Bocking, Braintree, Halsteed, Wittam, or Colchester, and shall deliver back the yarn by any reel shorter than two yards about, shall be subject to the like punishment. f. 4.

3. By the 10 An. c. 16. Every clothier, clothworker, card-maker, or other person concerned in the trade of the woollen manufacture, shall pay his workmen in money, and not in goods; on pain of 20 s. on conviction in 30 days, before one justice, on oath of one witness, half to the informer, and half to the poor: If he shall not pay in 14 days after conviction, the same to be levied by the constable by warrant of such justice, by distress; and where no sufficient distress can be found, to be committed to the gaol or house of correction, to be kept to hard labour not exceeding 3 months. f. 6, 7, 8.

Persons aggrieved on this act may appeal to the next sessions,

who may allow costs. f. 9.

4. By the 1 G. ft. 2. c. 15. Every clothier, clothworker, card maker, or other person concerned in the trade of the woollen manusacture, shall pay his workmen in money, and not in goods; on pain of 405. on conviction (in 40 days) before one justice, on oath of one witness; to be disposed, if in London, to the benefit of Christ's hospital, elsewhere to the poor where the offence shall be discovered; and if he shall not pay in 30 days, to be levied by the constable, by warrant of such justice, by distress; and where no sufficient distress can be sound, to be committed to the common gael or house of correction, to be kept to hard labour for 3 kalendar months. f. 7, 8, 12.

5. By

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5. By the 12 G. c. 34. If any person shall, by day or night break or enter by force into any house or shop, with intent to cut or deftroy any ferge or other woollen goods in the loom, or any tools employed in the making thereof, or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom, or on the rack, or shall burn, cut, or destroy any rack on which any fuch ferges or woollen goods are hanged in order to dry, or shall wilfully and maliciously break or destroy any tools used in the making such goods; he shall be guilty of felony with-

out benefit of clergy. f. 7.

6. By the 13 G. c. 23. Whereas disputes have arisen, between the clothiers and makers of woollen cloth, and the manufacturers employed by them, concerning the length of the warping bars, and uncertainty of weights, by which wool, yarn, and other materials used in the manufacturing of woollen goods have been delivered out to the workmen, for quieting the same it is enacted. that it shall not be lawful for any maker of mixed, medley, or white cloth, to use any bars called warping bars, but only such which shall be of the measure and length hereafter appointed; that is to fay, every long warping bar shall be in length three yards and three inches, and no more; and every round warping bar shall be 4 yards and 4 inches round, and no more; the faid 3 inches on the long bar, and the faid 4 inches on the round bar, being in lieu of the over measure usually allowed in cloths; and also that the thrums at the ends of the warping bars shall not exceed 18 inches in length; and if any maker of such cloth shall use any warping bar of other length or measure, or with thrums exceeding 18 inches in length, he shall forfeit 10%. f. 1.

Every maker of fuch cloth, or goods mixed with wool, shall give out all wool, yarn, or other materials, by weight at 16 ounces to the pound; and shall receive back the same by the

fame weight, on pain of 51. f 2.

Offences against this act shall be determined by two justices, on information on oath, within 3 kalendar months; who shall levy poor; for want of sufficient distress, to be committed to gaol not exceeding 3 months, or until fatisfaction be made. J. 4.

And all disputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods, or goods mixed with wool, and any weaver or other perion employed in such manufactures, shall be determined by two justices, who shall on complaint summon the parties, and hear and examine on oath, and adjudge such satisfaction, and give such costs and damages to the party grieved, as they shall judge reasonable, and iffue their warrant to levy fuch costs and damages (if not paid in ten days) by diffress, and for want of sufficient diffress, shall commit the party to the county gaol or house of correction, not exceeding 3 months, or till fatisfaction be made. f. 5.

Persons aggrieved by order of such justices, may appeal to the next fessions, giving 6 days notice; and the sessions may award fuch costs and damages as they shall judge reasonable, and levy the same by diffres; and for want of sufficient diffres, may com-

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And one justice, on information on oath, that any person is, or is suspected to be, guilty of any the ill practices aforesaid, may iffue his warrant to the constable or other peace officer, or to any churchwarden or overseer, directing him in the day time to enter into any house, shop, warehouse, or other suspected place, to search for and examine all such bars and weights as shall be made use of for the purposes before mentioned, by any such clothier or maker of woollen goods; and if such person shall interrupt the officer, he shall forfeit 5 l. f. 7.

And every maker of mixed, medley, or white broad cloth, shall pay the weaver according to the number of yards, that the chains are laid on the warping bars, and not otherwise, on pain of 51. f. 9.

XV. Disputes between masters and servants in the woollen, linen, sustian, cotton, and iron manufactures; by several statutes.

1. By the 1 An. st. 2. c. 18. If any person employed in the woollen, linen, fustian, cotton, or iron manufactures shall imbezil or pursoin any wests, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, or shall reel short or false yarn, and shall be convicted by oath of one witness, or consession, before one justice, he shall forfeit double the value of the damages: And if he shall neglect or resuse to pay the same, the justice shall commit him to the house of correction until satisfaction shall be made: And if it shall appear to the justice, that he is not able to make satisfaction, he shall be there publickly whipped, and kept to hard labour not exceeding 14 days. s. 1.

And every person buying or receiving any wests, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, shall suffer in like manner.  $\int .2$ .

And all payments to the faid workmen, shall be in money, and not in cloth, victuals, or commodities; and all wool delivered out to be wrought up, shall be delivered with declaration of the true weight thereof; on pain that every offender in either of the said cases, shall forfeit double the value of what shall be due for such work; and if any such workman shall be guilty of any such fraud or default, in the work by him done, he shall answer double damages. 1. 3.

And all wages, demands, frauds, and defaults of labourers, in the faid manufactures, concerning work done, shall be determined by two justices, who may summon and examine witnesses on oath: Persons aggrieved may appeal to the sessions to be holden next after notice of the order of the said two justices; and if the sessions give judgment against the appellant, they shall order him to pay such costs as to them shall seem meet. f. 4.

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2. And by the 13 G. 2. c. 8. If any person employed in the working up of any woollen, linen, fustian, cotton, or iron manufactures, shall purloin, embezil, secret, sell, pawn, exchange, or otherwise illegally dispose of any of the materials, whether the fame or any part thereof be or be not first wrought up, or shall reel short or false yarn, and shall be convicted thereof as by the 1 An. ft. 2. c. 18. he shall forfeit double value of the damages. together with such costs as the justice shall judge reasonable; and if not paid immediately, the faid justice shall cause him to be committed to the house of correction, to be whipped and kept to hard labour, not exceeding 14 days; and for a fecond, or other subsequent offence, for such imbezilling or purloining, he shall forfeit four times the value of the damages, together with such costs as the justice shall judge reasonable; and if not paid immediately, then such or any other justice shall cause him to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, nor less than one month, and also during the time of such commitment shall cause him to be publickly whipped in the market town where he shall be committed, at the market place or cross, once or oftner as to such justice shall feem reasonable. f. t.

And the receivers of the same shall be subject to the like penal-

ties.

And the forfeitures by both these acts shall be half to the party injured, and half to the poor; with the like liberty of appealing on this act, as on the 1 An. id. f. 3.

XVI. Disputes between masters and their workmen, in the leathern manufactures; by the 13 G. 2.

If any person employed in cutting, paring, washing, dressing, fewing, making up, or otherwise manufacturing of gloves, breeches, leather, skins, boots, shoes, slippers, wares, or other goods or materials to be made use of in any the said employments, or in any branch or particular thereof, shall fraudulently purloin, embezil, fecret, fell, pawn, or exchange all or any part of the gloves, breeches, leather, skins, parings or shreds of gloves, or leather, boots, shoes, slippers, or other the said wares, either before or after they shall be made into wares, and be thereof convicted by the oath of the master or owner, or other credible witness, or confession, before one justice where the offence shall be committed or the offender shall reside; such justice may award him to make satisfaction to the party injured, not exceeding double value of the goods so purloined or disposed of, half to the party grieved, and half to the poor, together with full charges attending the conviction; to be levied by diffress and sale; and if he shall not have goods sufficient, and shall not pay immediately, such justice shall commit him to the house of correction or other publick prison, to be kept to hard labour for 14 days, and whipped in such manper as the justice shall direct; and for a second, or other subse-

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quent offence, he shall forfeit four times the value of the damages, together with such costs as the justice shall judge reasonable; and if not paid immediately, to be committed to the house of correction or other publick prison, to be there kept to hard labour not exceeding three months, nor less than one month, and also during such commitment to be publickly whipped in the market town where he shall be committed, at the market place or cross, once or oftner as to such justice shall seem reasonable. f. 4.

And every person who shall knowingly or willingly receive any the said goods or materials, either from the person offending, or from any other person (except the owner) or offer so to do; he shall, on like conviction, make such recompence in two days, or else be subject to such distress, and for want of sufficient distress be liable to the like punishment, as the persons so pursoning or otherwise disposing thereof as above; and so in like manner for the second and every subsequent offence. s. 5.

And all payments to workmen employed in the faid manufactures, shall be in money, and not in goods, except by their own request and consent; and all materials delivered out to be wrought in such manufactures, shall be delivered with a declaration of the true weight, quantity, or tale thereof; on pain of forseiting to such manufacturer double value of what shall be due for his work; and if such labourer or manufacturer shall be guilty of any fraud, abuse, neglect, or default in the work by him undertaken to be done, he shall answer to the owner double damages. § 6.

And all wages, demands, frauds, abuses, neglects, and defaults of labourers and manufacturers in the said trades, concerning any work done in such manufacture, shall be determined by two justices, who may summon and examine witnesses upon oath. f. 7.

Moreover, every person retained or employed in making up any the said manusactures, for any one master, and neglecting the personance thereof, either by procuring or permitting himself to be subsequently employed by any other master, before he hath compleated the work, shall on conviction by oath of one witness before one justice, be sent to the houseof correction, to be kept to hard labour not exceeding one month. f. 8.

Persons aggrieved by any order of the said two justices, may appeal to the next sessions, giving 8 days notice; and the sessions may award costs to either party. But no order of such two justices shall be appealed against, or quashed, for want of form only. I. 9.

XVII. Disputes between masters and their workmen, in the making of bats, or in the woollen, linen, sustian, cotton, iron, leather, furr, hemp, flax, mobair, or silken manufactures; by the 22 G. 2. C. 27.

If any person hired or employed to make up any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, icon, leather, furr, happ, flax, mohair, or filk manufactures, or any D d z

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manufactures made up of wool, furr, hemp, flax, cotton, mohair, or filk, or of any the faid materials mixed one with another, shall purloin, embezil, or otherwise unlawfully dispose of any of the materials with which he shall be intrusted, whether the same be or be not first wrought up, or shall reel short or false yarn, and be convicted thereof by the oath of the owner, or other credible witness, or confession, before one justice where the offence shall be committed, or the party shall reside, he shall be committed to the house of correction, or other publick prison, to be kept to hard labour for 14 days, and to be once publickly whipped, at the market place, or other publick place where he shall be committed; and for a second or other subsequent offence, he shall be committed in like manner, for any time not exceeding three months, nor less than one month, to be kept to hard labour, and also to be

publickly whipped twice or oftner. f. 1.

And if any person shall be convicted as aforesaid, of buying, receiving, or taking by way of gift, pledge, fale, or exchange, or in any other manner, from any person whom he knows to be employed to make or prepare any the faid manufactures, any thrums or ends of yarns, or any other materials of wool, furr, hemp, flax, cotton, iron, or any leather, mohair, or filk, whether the same be or be not first wrought up, the consent of the employer not being first had; or of buying or receiving in any manner whatfoever, from any other person, any of the said materials, whether the fame be or be not first wrought up, knowing them to be purloined or embezilled, he shall, for the first offence, forfeit 20 l. and if not paid immediately, the justice shall commit him to the house of correction or other publick prison, to be kept to hard labour for 14 days, unless the forfeiture be sooner paid; and if it be not paid in two days before the expiration of the term, he shall be publickly whipped at the market place, or other publick place of the town, once or oftner, as the justices shall order; and for a fecond, or other subsequent offence, he shall forfeit 40%. and if not paid immediately, he shall be committed in like manner, to be kept to hard labour not exceeding three months, nor less than one month, unless the forfeiture be sooner paid; and if it be not paid in seven days before expiration of the term, he shall be publickly whipped twice or oftner, as the justice shall order: And the said forfeitures, after satisfaction made thereout to the party injured, with fuch costs as shall be adjudged by the justice, shall be equally distributed among the poor of the parish where the offender shall reside. f. 2.

(Which conviction shall be in the form and words following;

Middlesex D E it remembred, that on the \_\_\_\_day of \_\_\_\_ in the to wit. D - year of his majesty's reign, A. B. was convicted before me [or us] — of his majesty's justices of the peace for the said county of — [or, for the riding or division of the faid county of \_\_\_\_ or, for the city, liberty, or town of \_\_\_\_ in the faid county of \_\_\_ as the case shall be] of buying, receiving, or taking to pawn (as the case shall be) - specifying the matedeli Seal

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rials or wares fo bought, received, or taken to pawn) the property of C. D. of \_\_\_\_ in the county of \_\_\_\_ and by him (or her) delivered to \_\_\_\_ to be manufactured. Given under my hand and seal [or, our hands and seals] the day and year aforesaid.

Which shall not be removed by certiorari: And the justices shall cause the same to be written on parchment and transmitted to the next fessions, to be filed amongst the records. 23 G. 2. c. 13.

Persons convicted of buying or receiving any the said materials, ma) appeal to the next sessions; in which case the execution of the judgment shall be suspended, the person entring into a recognizance before the justice, at the time of the conviction, with two fureties, in double the fum adjudged, to profecute the appeal, and to be forthcoming to abide the determination of the justices in the faid fessions; and the sessions may award costs to either party; and if the judgment be affirmed, the appellant shall immediately pay the fum adjudged, with costs; or in default thereof, shall suffer the penalties before directed. J. 3.

And if any person shall be convicted of purloining or embezilling any the faid materials, or of buying or receiving the fame in manner before described, the justice before whom the conviction shall be, may iffue his warrant to any person, impowering him in the presence of a constable, to enter into and search in the day time, the houses and other places belonging to such person, and to bring fuch materials as shall be found, before the faid justice. to be kept in custody by him; and if in 24 days it shall be made appear to the justice, that the person from whose house the said materials shall be so taken, is the lawful owner, they shall be reflored to him; otherwise they shall be deemed to be purloined or embezilled, and shall be publickly fold, and the money arising thereby (charges of fale being first deducted) shall be equally difiributed amongst the poor of the parish where the person convicted shall reside. 1. 4.

And the faid justice shall, within three days after such materials shall be brought to him, give notice thereof in writing under his hand and feal, to the person convicted, appointing a time and place for his attending to prove his property therein; which shall be within 21 days, and not less than 18 days after such notice; and if such person be in any house of correction or other prison, the justice shall cause a copy of the said notice, attested under his hand and feal, to be delivered to the keeper; who shall bring the faid person at the time and place specified, on pain of forfeiting to the prisoner the full value of the said materials, by distress and fale, by warrant of the faid justice, if not paid immediately.

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If any person shall be aggrieved by the judgment of the justice, relating to the fale of the materials, he may appeal to the next fessions, and in the mean time the sale shall be postponed; a written notice under the hand of the appellant, fignifying his intention to appeal, being given to the justice, before the time appointed for the fale; and if the appellant shall not profecute the ap-

peal, or the judgment shall be affirmed, the sessions may award costs to the defendant. 1.6.

And if any person shall not make use of the whole of the materials, and shall not return the remainder in 21 days (if required by the owner) this shall be deemed embezilling and purloining,

And upon complaint on oath of any offence against this act to any one justice, he shall issue his warrant for bringing the offender before him, or any other justice, who shall hear and determine the fame. f. 8.

And if any person shall be employed to work up any of the faid manufactures for any one matter, and shall neglect or refuse the performance thereof, by permitting himself to be subsequently retained by any other person, before he shall have compleated the same; he shall, on conviction on the oath of one witness, before one justice, be fent to the house of correction, to be kept to hard labour not exceeding one month. f. 9.

But this statute shall not repeal the 13 & 14 C. 2. nor the

20 C. 2. nor the 8 & 9 W. before mentioned. f. 10. Moreover, all contracts or agreements, and all by-laws, rules, and orders, made in any unlawful clubs and focieties, by any perfons employed in any woollen manufacture, or in the making of felts or hats, or in any manufacture of filk, mohair, furr, hemp, flax, linen, cotton, fustian, iron, or leather, or in any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or filk, or any of the faid materials mixed one with another, for regulating any of the faid trades, or for fettling the prices of goods, or for advancing their wages, or for leffening their usual hours of work, shall be void: And if any such person shall be concerned in any fuch combination, he shall on conviction in three kalendar months, on the oath of one witness before two justices, be committed to the house of correction, to be kept to hard labour, not exceeding three months, or to the common gaol not exceeding

three months. f. 12. And if any fuch person shall depart from his service before the end of the term, or shall quit or return his work before it be finished, unless for some reasonable cause to be allowed by two justices; he shall on the like conviction before two justices, be committed to the house of correction, to be kept to hard labour not exceed-

ing three months. id. And if any fuch person shall wilfully damnify, spoil, or destroy, without confent of the owner, any work committed to his charge, he shall, on conviction as aforefaid, forfeit to the owner double value, by diffress, by warrant of two justices; and for want of fufficient diffress, to be committed to the house of correction, to be kept to hard labour, for any time not exceeding three months, or till satisfaction be made. id.

And every fuch matter shall pay his workmen in money, and not otherwise, and shall not make any deduction on account of any goods fold or delivered previous to the agreement: And for the more easy recovering the said wages, two justices upon complaint (in three months, 13 6, c. 23 ) shall fummon the party of-

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fending, and for non-payment shall issue their warrant to levy the same by diffress; and for want of sufficient diffress, shall commit the offender to gaol for fix months, or until he shall pay, or give full fatisfaction for the fame, to the good liking of the party

And every person paying the same otherwise than in money, shall forfeit 10%. half to the informer, and half to the party

grieved, by distress as aforesaid. id.

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Persons aggrieved by order of the two justices may appeal to the next fessions, giving reasonable notice; the reasonableness of which notice shall be determined by the justices at the said seffions; and if reasonable time of notice was not given, they shall adjourn the appeal to the next sessions after; and the sessions may

award costs to either party. id.

Moreover, if any person shall assault or abuse any master or other person concerned in any of the said manufactures, whereby he shall receive any bodily hurt, for not complying with any such illegal by-laws, rules, or orders; or shall write or cause to be written, or knowingly fend or cause to be sent any letter, writing, or message, threatning any harm to any such person, or threatning to burn, pull down, or destroy any of his houses, or cut down any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any fuch illegal by laws, rules, or orders; he shall on conviction by indictment, in 12 kalendar months, be guilty of felony, and transported for seven years.

#### XVIII. Disputes between masters and their workemen in the manufacture of clocks and watches; by the 27 G. 2. C. 7.

If any person employed by any one practising the trade of clockmaking, or watchmaking, or any part or branch thereof, to make, finish, alter, repair, or clean any clock, watch, or part thereof; or intrusted by any person practising the said trade or trades, with any gold, filver, or other metal or material, to be, or that shall be, in the whole or in part, wrought or manufactured for any part of a clock or watch, or any diamond or other precious stone, to be, or that shall be, set or fixed in or about any clock or watch; shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock, watch, gold, filver, or othe: metal or material, or any part thereof, or any diamond or other precious stone, with which he shall be so intrusted; and shall be thereof convicted by the oath of the owner, or other credible witness, or confession, before one justice where the offence shall be committed, or the person so charged shall reside: he shall for the first offence forfeit 201. and if not forthwith paid, the justice shall commit him to the house of correction or other publick prison, there to be kept to hard labour for the space of 14 days, unless the forfeiture shall be sooner paid; and if within two days before the expiration of the faid 14 days

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fuch forfeiture shall not be paid, the justice may order him to be publickly whipped at the market place, or some other publick place, of the city, town, or place, where he shall be committed; and for a second, or other subsequent offence, he shall forseit 40% in like manner, and if not paid forthwith, the justice shall commit him as aforesaid, to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed, the forfeiture shall not be paid, the justice may order him to be whipped in like manner twice or oftner, as to such justice shall appear reasonable.

And if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, fale, or exchange, or in any other manner, of or from any person whomsoever, any clock or watch, or part thereof, or any gold, filver, or other metal or material as aforesaid, whether the same, or any part thereof, be or be not wrought or manufactured, or any fuch diamond or other precious stone, knowing the same to be so purloined or imbezilled; he shall, on the like conviction, for the first offence forfeit 20 /. and if not forthwith paid, the justice shall commit him in like manner, to be kept to hard labour for 14 days, unless the forfeiture shall be fooner paid, and if within two days before the expiration of the faid 14 days, the faid forfeiture shall not be paid, the justice shall order him to be publickly whipped as aforefaid, once or oftner, as to fuch justice shall appear reasonable; and for a second or other subsequent offence, he shall forfeit 40 1. and if not forthwith paid, the justice shall commit him as aforesaid, to be kept to hard labour, for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within feven days before the expiration of the time for which he shall be committed, the forfeiture shall not be paid, the justice shall order him to be publickly whipped as aforefaid, twice or oftner, as to him shall appear reasonable.

And one justice, on complaint to him made upon oath, of any offence against this act, may iffue his warrant for apprehending and bringing before him, or before any other justice of the same place, the person so charged.

And the conviction shall be in this form,

Middlesex B. it remembred that on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_ to wit. B in the \_\_\_\_\_\_ year of his majesty's reign, A. B. was convicted before me (or us) \_\_\_\_\_\_ of his majesty's justices of the seace for the said county of \_\_\_\_\_\_ or for the \_\_\_\_\_\_ riding (or division) of the said county of \_\_\_\_\_\_ or for the city, liberty, or town of \_\_\_\_\_\_ in the said county of \_\_\_\_\_\_ (as the case shall be) of parloining, embezilling, secreting, selling, pawning, exchanging, or unlawfully dissolving of, or of buying, receiving, or taking to pown (as the case shall happen to be) \_\_\_\_\_\_ specifying the respective goods, materials or effects) the property of C. D. of \_\_\_\_\_ in the county of \_\_\_\_\_\_ Given under my hand and seal (or our hands and seals) the day and year aforesaid.

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If any person shall think himself aggrieved by the judgment of the justice, he may appeal to the next sessions; in which case the execution of the judgment shall be suspended, the person so convicted entring into a recognizance at the time of the conviction, with two sureties, in double the sum adjudged, to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in such sessions; and the justices there shall hear and determine the same, and award such costs to either party, as to them shall appear just and reasonable: and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged, together with such costs as shall by the court be awarded; or in default thereof, shall suffer the penalties as for purloining, embezilling, or receiving as afore-said.

The faid forfeitures, after fatisfaction made thereout to the party injured, together with such costs of prosecution as the justice shall judge reasonable, shall go to the use of the poor where the offender shall reside.

And the justice shall cause the conviction to be fairly written upon parchment, and transmitted to the next sessions, there to be filed and kept amongst the records.

And the same shall not be removed by certiorari.

XIX. Disputes between masters and servants in husbandry, artificers, handicrastismen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers; by the 20 G. 2. C. 19.

By construction of law upon the statute of the 5 El. the justices had a power of compelling the payment of the wages which they had rated and assessed; but the said statute being desicient in two material points, to wit, in extending only to such wages as should be rated, and to servants in husbandry only; and moreover, there being therein (as hath been observed) no power to admit the servant's oath as evidence; therefore by the 20 G. 2. 6.19 it is enacted as follows:

All complaints, differences, and disputes between masters or miltresses and servants in husbandry hired for a year or longer, or between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time or in any other manner, shall be determined (A) by one justice, where the master or mistress shall inhabit, altho' no rate or assessment of wages has been made that year; which justice shall examine on oath any such servant or other the said persons, or any other witnesses touching such complaint, and make such order (B) for payment of wages, as to him shall seem just and reasonable, provided that the sum in question do not exceed 101. with regard to any servant, nor 51. with regard to any other persons before mentioned; and in case of non payment for 21 days, such justice may issue his warrant to levy the same by distress (C). I.

And

# Serbants.

And by the said statute, such justice on application or complaint on oath by any master, mistress, or employer, against any such servant, artificer, handicrastsman, miner, collier, keelman, pitman, glassman, potter, or labourer, concerning any misdemeanor, miscarriage, or ill behaviour in such his service or employment, may hear and determine the same (D), and punish the offender by commitment (E) to the house of correction, there to remain and be corrected, and held to hard labour not exceeding one kalendar month, or otherwise by abating some part of his wages (F), or by discharging (G) such servant or other the said per-

fons from their fervice or employment. f. 1.

And in like manner, such justice on complaint or application on oath by any such servant, artificer, handicrastsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, against such master, mistress, or employer, concerning any misusage, resusal of necessary provision, cruelty, or other ill treatment, may summon (H) such master, mistress, or employer, to appear before him at a reasonable time to be presixed in such summons; and he shall examine into the matter of such complaint, whether such master, mistress, or employer shall appear or not, proof being made upon oath of their being duly summoned; and upon proof thereof made upon oath, to his satisfaction, may discharge (I) such servant, or other person aforesaid, from his service and employment, which discharge shall be given under his hand and seal gravis. J. 2.

If any person shall think himself aggrieved by such determination, order, or warrant of such justice (except any order of commitment) he may appeal to the next sessions, who may award costs to either party, not exceeding 40s. to be levied by distress in

manner before mentioned. f. 5.

And no certificari shall issue to remove any proceedings hereupon. f. 6.

Note; The words in the aforegoing statute [and other labourers, employed for any certain time, or in any other manner] are very general and comprehensive, but yet perhaps ought not to be underflood without some limitation: especially it seemeth not necessary to extend them to any of the workmen in the woollen, linen, cotton, iron, leather, furr, hempen, or other manufactures herein before specified, because the law hath provided other methods of proceeding therein, and particularly because the statute of the 22 G. 2. which is subsequent to this statute, takes no notice of this statute, but makes divers regulations in the aforesaid instances, which if this statute had been supposed to extend unto them, would have been superfluous and impertinent. And with less reaion may the word labourers feem to extend to footmen, coachmen, carriers, and fuch like; but from the company with which it is ranked, to wit, miners, colliers, keelmen, and the like, it deems most properly to fignify such persons, not being brought up to or employed in trades, as procure their fustenance by bodily labour.

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### XX. Shipmasters and their seamen.

By the 2 G. 2. c. 36. which by the 23 G. 2. c. 26. is conti-

nued to March 25, 1764, &c. it is enacted as follows:

It shall not be lawful for any master of a ship bound to parts beyond sea, to carry any seaman or mariner, except his apprentices, to sea, without first agreeing with them for their wages, which agreement shall be made in writing, declaring what wages each seaman is to have respectively, during the whole voyage, or for the time he shall ship himself for; and also to express the voyage, for which the mariner was shipt, to perform the same, and to be signed by both parties; on pain that the master shall sorfeit sl. for every such seaman to Greenwich hospital, to be recovered on oath of one witness, before one justice, who shall issue his warrant to bring such master before him; to be levied by distress; and if no distress can be found, to be committed to gaol till he shall pay the same.

Such mariner shall also fign the agreement, in 3 days after he is

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And if any mariner shall desert, or refuse to proceed on the voyage, or shall desert beyond the seas, after he shall have signed such agreement, he shall forfeit to the owner of the ship the

wages due to him.

And if any mariner shall desert or absent himself, after he hath signed such contract; on application of the master, or owner of the ship, to one justice, he shall issue his warrant to apprehend such mariner: and if he shall resuse to proceed on the voyage, and shall not give a sufficient reason for such resusal, then to be committed to the house of correction, to be kept to hard labour, not exceeding 30 days, nor less than 14 days.

And if any mariner shall absent himself from the ship, without leave of the master, or other officer having charge of such ship, he shall for every day's absence forseit two days pay to Greenwich

hospital

And if any mariner, not entring into the king's fervice, shall leave the ship before he shall have a discharge in writing by the master, he shall forseit one month's pay, to be recovered and dis-

posed of as hereafter is mentioned.

And the matters shall pay the mariners their wages, if demanded, in 30 days after the ship's being entred at the custom house (unless there is a covenant to the contrary), or at the time they shall be discharged, which shall first happen, deducting the penalties of this act: on pain of paying to each mariner that shall be unpaid, 20.5, above his wages, to be recovered as the wages.

But no mariner by entring into, or figning such agreement, shall be deprived of any means for recovery of wages, which he may now use: And the master shall be obliged to produce the

contract, and not the mariner.

And the master shall deduct out of the wages all the penalties of this act, and enter the same in a book, and make oath, if required, to the truth thereof; which book shall be signed by the

mafter

master, and two principal officers of the ship: which forfeitures (except forfeiture of wages to the owner on desertion, or refusing to proceed on the voyage) shall be applied to Greenwich hospital, to be paid to the officer in any port who collects the 6 d. a month deducted out of seamens wages, for the use of the hospital; which officer shall have power to administer an oath to such master, touching the truth of such penalties.

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The master deducting the said penalties, and not paying them ever in 3 months, shall forfeit treble to the said hospital; to be recovered as any penalties, for not duly paying the 6 d. a month.

Nevertheless, this act shall not debar any seaman from entring into the king's service, nor shall he forfeit his wages in that case, nor shall such entry be deemed a desertion.

#### XXI. Taylors and their workmen within the bills.

By the 7 G. A. 1. c. 13. All contracts by or between journeymen taylors within the bills, for advancing their wages, or lessening their hours of work, shall be void; and persons entring into such agreement, shall on conviction in 3 months, on oath of one witness, before two justices, be committed to the gaol or house of correction for any time not exceeding two months.

And the fessions from time to time, upon application to them made, shall appoint the wages and hours of work; which all taylors and their workmen shall observe, on pain of imprisonment by such justices for any time not exceeding two months, on prose-

cution in 6 days.

And if any journeyman taylor shall depart from his service before the end of his term, or before his work be finished, or shall refuse to enter into work, unless for cause to be allowed by two justices, he shall be sent to the house of correction not exceeding two months.

Taylors allowing greater wages than so limited, shall forfeit 5 l, en conviction in 3 months, half to the informer, and half to the poor; and journeymen taking greater wages, shall be sent to the house of correction not exceeding two months.

Persons aggrieved by any order of two justices, may appeal to the next sessions, giving 6 days notice; and the sessions may award

costs to either party.

#### XXII. Shoemakers and their workmen within the bills.

By the 9 G. c. 27. If any journeyman shoemaker within the bills of mortality, shall be accused by his master of pursoining any shoes or other wares or materials, one justice where the offence shall be committed, or the offender shall inhabit, on oath of such offence, may summon the party, or issue his warrant to apprehend him; and if the same is proved before him by confession, or oath of one witness, he shall award satisfaction for damages and charges, and levy the same by distress; and for want of sufficient distress, shall cause the offender to be whipped where the offence was committed; and for a second or other offence, he shall com-

mit him to the house of correction, not exceeding one month, nor less than 14 days.

And every person who shall buy, receive, or take in pawn the

fame, shall be subject to the same punishment.

And two justices, on complaint on oath, may issue their warrant for searching in the day time for goods so purloined, and break open doors, and every person hindring such search shall forfeit to i. to him who shall sue in two months; and if such goods shall be found, they shall restore them to the owner, and cause the offender to make satisfaction for the damages and charges, as aforesaid.

And every person retained by one master, who shall suffer himfelf to be retained by any other, before he hath finished his work, shall, on conviction on oath of one witness, before one justice, be

fent to the house of correction not exceeding one month.

Perfons aggrieved may appeal to the next fessions, giving 8 days notice.

# XXIII. How far the master is answerable for the

1. The master is indictable for a nulance done by his servant;

as for throwing dirt in the highways. L. Raym. 264.

But nevertheless it seemeth, that the servant also is indictable; for Mr. Hawkius says, that a servant is not excused the commission of any crime, by the command or coertion of his master. i Haw. 3.

2. If goods are delivered to the servant of a carrier, and the goods are lost, an action lies against the master. Wood 95.

3. A fervant with a cart, ran against another cart, wherein was a pipe of sack, and overturned the cart, and spoiled the sack; an action lies against the master. 2 Salk. 441.

4. M. 10 W. Jones and Hart. A pawn broker's fervant took a pawn; the pawner came and tendred the money to the fervant; he said he had lost the goods; upon this the pawner brought an action against the master; and it was held well. 2 Salk. 441.

5. H. 8 G. Mead and Hammond. The plaintiff, according to the common course of dealing, delivered to the desendant's servant an ingot of gold to essay; and it not being returned, he brought an action against the master. And Prate Ch. J. directed the jury, that the delivery to the servant was sufficient to maintain the action against the master, on proving a subsequent demand and

refusal; so the plaintist had a verdict. Str. 505.

6. M. 8 G. Cary and Webster. The defendant was a clerk of the South sea company, and took in payments. The plaintist paid him 600 l. and he paid it over to the company. And by Pratt Ch. J. No action in this case lies against the servant. If he had not paid it over, the plaintist would have had his option, either to charge him or the company; as in the common case of payment to a goldsmith's servant, who doth not carry it to the account of his master, the party hath an election to go against

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either: he may charge the fervant, because till the money is paid over, the servant receives it to his use; or he may pass by the fervant, and make his demand upon the master, because the payment to the servant is made in considence of the credit given him by the master. Str. 480.

A. Summons of the master for wages, on complaint of the servant, on the 20 G. 2. c. 19.

Westmorland. { To the constable of —— in the said county.

TATHEREAS information and complaint bath been made and for the said county, upon the oath of A. S. of \_\_\_\_\_ in the faid county, busbandman, that he the Said A. S. was duly bired by A. M. of - in the faid county, busbandman, to be a servant in busbandry to and with him the said A. M. for one whole year, to wit, from Whitfuntide in the year of our lord - to Whitfuntide now last past, [or, labourer; or, artificer; or as the case shall be for the wages of -; And accordingly that he the faid A.S. hath duly performed the said service; yet nevertheless that he the said A.M. hath resused, and doth resuse, to pay unto bim the Said A. S. the wages justly due to bim for his Said Service: These are therefore to command you forthwith to summon the said A. M. to appear before me at - in the faid county, on -- day of this present month of - at the hour of - in the afternoon of the same day, to show cause why the faid wages should not be paid. And be you then there to certify what you shall have done in the premisses. Given under my hand and seal the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of -

### B. Order for payment of the fame.

Westmorland. WHEREAS information and complaint bath been made unto me—one of his majesty's justices of the peace in and for the said county, upon the oath of A.S. of—in the said county, bushandman, that he the said A.S. was duly bired by A.M. of—in the said county, bushandman, to be a servant in husbandry to and with him the said A.M. for one whole year, to wit, from Whitsuntide in the year of our lord—to Whitsuntide now last past [or, artisteer, glassman, pitman, labourer, or otherwise as the case shall be] and that he the said A.S. bath duly performed the said service; yet nevertheless, that he the said A.M. did resuse to pay to him the said A.S. the wages justly due unto him for such service as eforesaid; And whereas the said A.M. having appeared before me, in pursuance of my summons for that purpose, bath not proved to me, that the said wages have been duly paid to him the said A.S. as aforesaid,

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aforefaid, nor bath shewed to me any just cause why the said wages should not be paid, and bath not paid the same : [Or, And whereas it duly appears to me as well upon the oath of A. C. constable of aforesaid, as otherwise, that he the said A. C. by virtue of my precept to him directed, did duly summen the faid A. M. to appear before me at a certain time and place therein prefixed, to show cause why the said wages should not be paid; and whereas the said A. M. hath neglected to appear according to the faid summons, and bath not shewed any cause as aforesaid I therefore, having duly examined into the truth and matter of the Said complaint, and upon due consideration had thereof, do hereby adjudge, determine, and order, that he the said A. M. upon due notice hereof, do pay or cause to be paid to him the said A. S. the sum of - which appears to me to be just and reasonable to be paid by him the Said A. M. to him the said A. S. as and for his wages as aforesaid. Given under my hand and seal the -— day of — in the — year of the reign of -

#### C. Warrant of distress for the same.

Westmorland. { To the constable of \_\_\_\_\_.

WHEREAS A. S. of \_\_\_\_ in the faid county, bufbandman, bath duly complained unto me - one of his majesty's justices of the peace in and for the said county, that A. M. of \_\_\_\_\_ in the said county, husbandman, hath refused to pay unto him the said A. S. the wages justly due unto him for service in hufbandry for one whole year truly and faithfully performed by him the faid A. S. to him the faid A. M. [Or, as the case shall be] And whereas the faid A. M. baving appeared before me in pursuance of my summons for that purpose, bath not proved to me that the said wages have been paid to him the said A. S. as aforesaid, and bath not showed any just cause why the same should not be paid [Or, And whereas the said A. M. bath been duly summoned by me to shew cause to me why the said wages should not be paid, but he the said A. M. bath neglected to appear according to the said summons, and bath not shewed any cause as aforesaid] I therefore the said justice, upon due consideration had thereof, on the - day of now last past, by writing under my band and seal did thereupon determine and order, that he the faid A. M. should pay to bim the faid A. S. the sum of - which appeared to me to be just and rea-Jonable to be paid by him the said A. M. to him the said A. S. as and for his wages as aforesaid; And whereas it duly appears to me, that he the faid A. M. on the faid - day of last past, had due notice of my Said order, and that due demand of the faid sum of -was then made of him the said A. M. by kim the faid A. S. but that he the faid A. M. did not then pay, nor hath yet paid the same, nor any part thereof; These are therefore to command you to make distress of the goods and chattels of him the said A. M. and if within the space of [four] days next after Jach distress by you made, the said sum of \_\_\_\_ together with the

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reasonable charges of taking and keeping the said distress, shall not be paid, that then you do fell the faid goods and chattels fo by you distrained, and out of the money artsing by the sale thereof, that you pay the said sum of unto bim the said A. S. returning the overplus upon demand unto him the faid A. M. the reasonable charges of taking, keeping, and felling the faid diffrefs, being thereout first deducted. Given under my hand and feal the - year -

D. Warrant for a servant on complaint of the master, for misbehaviour, on the 20 G. 2. c. 19.

Westmorland. } To the constable of -

IMEREAS information and complaint hath been made unto one of his majefly's justices of the peace in and for the faid county, upon the oath of A. M. of - in the faid county, busbandman, [artificer, labourer, or as the case shall be] that A. S. of \_\_\_\_ aforesaid in the said county, husbandman, was bired by him the said A. M. to be servant in husbandry to him the Said A. M. for one whole year, from Whitluntide now last past, antil Whitsuntide now next ensuing; and that he the said A. S. bath in his said service [or, employment] been guilty of divers mis-demeanors, miscarriages, and ill behaviour, towards him the said A. M. and particularly [as the case shall be]; These are therefore to command you forthwith to bring the faid A. S. before me to answer unto the faid complaint, and to be further dealt withal according to law. Given under my hand and feal, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_

E. Commitment of the fervant thereupon to the house of correction.

To the constable of - in the faid county, Westmorland. and to the keeper of the house of correction at - in the faid county.

HEREAS information and complaint bath been made - (the fame as above, reciting the complaint) And whereas in pursuance of the statute in that case made and provided, I have duly examined the proofs and allegations of both the fald parties, touching the matter of the faid complaint, and upon due consideration had thereof, have adjudged and determined, and do hereby adjudge and determine the faid complaint to be true: These are therefore to command you the faid confiable forthwith to convey the said A. S. to the said house of correction at - oforesaid, and to deliver bim to the keeper thereof, together with this warrant: And I do hereby command you the faid keeper to receive the faid A. S. into your custody in the faid bouse of correction, there to remain,

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20 217 remain, and be corrected, and beld to hard labour for the space of one kalendar month [or for a lesser time] from the date bereof. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_\_.

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F. Or otherwise he may be punished by abatement of wages, as follows:

THE same as above to — and do bereby adjudge and determine the said complaint to be true: I do therefore bereby order, as a punishment for the said offence, that the said A. S. shall about from his awages to be paid to him by the said A. M. the sum of — and do hereby discharge the said A. M. from the payment of the said sum of — as part of the awages of him the said A.S. Given under my hand and seat the — day of — in the — year — .

G. Or otherwise he may be discharged, thus:

and do bereby adjudge and determine the said complaint to be true: I do therefore hereby order, as a punishment for the said offence, that the said A.S. be discharged, and do herely discharge him the said A.S. from his said service [or, employment] and the said M.A. from keeping him the said A.S. Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year \_\_\_\_.

H. Summons of the master, on complaint of the servant, for ill usage; on the 20 G. 2. c. 19.

Westmorland. To the constable of \_\_\_\_\_.

HEREAS complaint bath been made unto me one of his majesty's justices of the peace in and for the said county, upon the oath of A.S. of - in the said county, bus bandman, [labourer, &c.] that he the Jaid A. S. was duly hired by A. M. of \_\_\_\_ aforesaid in the said county, busbandman, to be servant in husbandry to him the said A. M. [or, as the case shall be] for one whole year to commence from Whitfuntide now last past; and that he the said A. S. did accordingly at the time aforesaid enter upon, and afterwards until this present time bath continued, and doth continue, in the faid service [or employment]; But that he the faid A. M. during the faid service bath misused him the faid A. S. [refused necessary provision, been guilty of cruelty or other ill treatment, mentioning the particulars] These are therefore to require you in his majesty's name, to summon the said A. M. by shewing unto him this precept, or leaving a true copy thereof at his usual place of abode, to appear before me on — at the house of in -in the said county, at the hour of -in the afternoon of the same day, to answer unto the said complaint. Ver. II.

# Dellions.

And be you then there with this precept, to certify what you shall bave done in the execution thereof. Given under my hand and feal \_\_\_ day of \_\_\_\_ in the year .

### Discharge of the servant thereupon.

HE same as before, to the end of the complaint -And whereas the faid A. M. in pursuance of my summons for that purpose bath appeared before me, to answer unto the said complaint, but bath not proved that he is not guilty of the faid complaint and charge; but on the contrary it bath been fully and duly proved before me, that he the faid A. M. is guilty of the several offences so complained of as aforesaid; [Or, And whereas it ap. pears to me upon the oath of A. C. constable of - aforesaid that be the faid A. C. by virtue of my precept to bim directed, did duly summon bim the said A. M. to appear before me at a reason. able time therein prefixed, to answer unto the said complaint, but be the faid A. M. hath neglected to appear according to the faid summons] I therefore, having examined into the truth and matter of the said complaint, and upon due consideration had thereof, do hereby adjudge the said complaint to be true; and thereupon do order that the faid A. S. be discharged, and do bereby discharge the said A. S. from bis faid service [or, employment.] Given under my - day of - in the - year of band and seal the the reign of -

# Sellions.

Seffions, what.

HE fessions of the peace is a court of record, holden before two or more justices, whereof one is of the Quorum, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament, Dalt. c. 185.

Difference between general, quarter, and special sessions.

2. It feems that the general fessions, and quarter fessions, are not fynonymous; but that the quarter fessions are a species only of the general fessions, and that such sessions only are properly called general quarter fessions, which are holden in the four quarters of the year in pursuance of the statute of the 2 H. 5. and that any other fessions holden at any other time for the general execution of the justices authority, which by the faid statute they are authorized to hold oftner than at the times therein specified if need be, may be properly called general fessions, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called special sessions. 2 Haw. 42.

At what time be kept.

3. By the 12 R. 2. c. 10. The justices shall keep their sessions the fessions shall in every quarter of the year at least, and by three days, if need be; king quar after in t after need

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no i bec be; on pain of being punished according to the discretion of the king's council, at the fuit of every man that will complain.

And by the 2 H. 5. ft. 1. c. 4. the particular time in every quarter of the year shall be as follows; to wit, in the first week after the feast of St. Michael, in the first week after the Epiphany, in the first week after the clause of Easter, and in the first week after the translation of St. Thomas the martyr; and more often if need be.

Except in Middlefex; where the justices shall keep their fessions twice in the year at least; and more often (if need be) for any riot or forcible entry. 14 H. 6. c. 4.

The strict, regular exposition of the abovesaid statute of the 2 H. 5. is, that if the feast day fall upon the Sunday, the sessions shall be held in the week following, and not the same week. 2 H. H. 49.

Yet it is very plain, that the quarter fessions are variously held in several counties, some at one day, some at another, yet it hath been ruled, that these are each of them good quarter sessions within the several acts that relate to quarter fessions; for these acts, especially the 2 H. 5. is only directive and in the affirmative, and therefore, tho' the fessions are held or another day, according to the general direction of the 12 R. 2. yet they are quarter sesfions. 2 H. H. 50.

4. There is no determination by any statute, of any particular Where the sefplace for the fessions to be kept, so it be within the county. And sions shall be if a place within the county be incorporated, and have justices of holden. its own, yet the same remains part of the county, and the justices of the county may notwithstanding hold their fessions there, altho' it may be that they shall not intermmeddle with matters, arising there, fave only such as happen in their sessions, or with relation Dalt. c. 185.

5. And from hence it feems to follow, that any two fuch ju- Precept to fumflices may direct their precept under their teste to the sheriff, for mon the sessions. the summons of the sessions, thereby commanding him to return a grand jury before them, or their fellow justices at a certain day and place, and to give notice to all stewards, constables, and bailiffs of liberties, to be present and do their duties at such day and place, and to proclaim in proper places throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. 2 Haw. 41.

And fuch precept should bear teste, or be dated, fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to fummon and return the several juries, and to warn all officers and others that have business there, to attend. Nelf. 35.

And it is faid that fuch a precept by any two fuch justices, cannot be superseded by any of their fellows, but only by writ out of 2 Haw. 41.

But the sessions without a previous summons is good, but then no man shall lose any thing for default of his appearance there, because no man had notice of their sitting. Lamb. 381. can any one be compelled to appear there. L. Raym. 1238.

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flions need be; Mr. Lambard puts a case from Mr. Marrow, that if two or more justices appoint the fessions to be holden in one town, and so many more appoint a fessions in another town the same day, and holds they may be fo held, and that the prefentments in both are good; but that appearance at one, is a discharge of service at the other. But it may be well queffioned whether they are not both void; for they make two courts of that which ought to be intire and but one: for it doth not appear that the justices are required or enabled to hold more than one fessions at a time, and To their authority being equal, and feeing no preference can be made by the priority of time, or nature of the fervice, they may be taken to be both void. However the justices, by whose forwardness such division happens, or on whom such miscarriage is chargeable, are punishable for the same by information and fine. or putting out of the commission, as the cause shall require. Dalt. c. 185.

Persons who are to appear there.

6. The persons who ought to appear at these sessions are as follows:

(1) The justices of the peace; these without doubt are compellable to appear at the fessions, for without their appearance the fessions cannot be holden. Dalt. c. 185.

But a justice ought not to join in an order at sessions wherein himself is concerned, nor ought his name to be in the caption. An order was quashed for that reason. 2 Salk. 607.

(2) The cuffos rotulorum, who hath custody of the rolls of selfions, ought (by the commission) to be there by himself, or by his deputy, who is the clerk of the peace. Dalt. c. 185.

(3) The sheriff also, by virtue of the commission, by himself or his deputy; to receive the fines, to return jurors, to execute process, and what else to his office doth appertain. id.

(4) All coroners. id.

(5) The constables of bundreds (that is, high constables) and all other officers to whom any warrant hath been directed, in order id. to make return thereof.

(6) All bailiffs of bundreds and liberties, in respect they are

bound to give an account of all fessions process. id. (7) The gaoler; to bring thither his prisoners, and to receive fuch as may be committed. Dalt. c. 185.

(8) The keeper of the house of correction, to give in a kalendar

and account of persons in his custody. id.

(9) All jurors returned by the sheriff, by virtue of the afore faid precept. And the jurors not appearing according to their fummons, are punishable by loss of issues, which usually make part of the eftreats of fessions. id.

(10) All persons bound by recognizance to answer, or to pro-

fecute and give evidence.

7. And all persons may freely attend at the sessions for the advancement of publick justice, and for the service of the king. And to this end they are (as it were) invited thither by a certain freedom of access, and by protection from common arrest; a thing that is incident to every court of record, and without which, justice would be greatly hindred. So that if a man come volun-

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tarily to the fessions, either to prefer a bill of indicament, or to ive information against another, or to tender a fine upon an indictment touching himself, or do come compelled to make appearance for faving his recognizance, and be arrested by the sheriff upon common and original process, in his coming thither, or during his tarrying there; it feemeth that (upon examination of the matter under his oath) he shall be discharged thereof by the privilege of this court, even as it is used in the higher courts at Westminster. Lamb. 402.

But Mr. Hawkins puts it more doubtfully, faying, It is questioned whether the fessions, as also all courts of record, may not discharge any person arrested, during his journeying to or from fuch courts, or necessary attendance there, by process from any other court: However it feems to be agreed, that any fuch court may discharge a person who shall be so arrested in the sace of it.

T. 7 G. 2. It feemeth to have been agreed in the argument upon Col. Pitts's case (which was an arrest in his return from parliament) that not only in the high court of parliament, but also in the inferior courts, the parties to the fuit, and also the witnesses, are protected in going, continuing, and returning. And this returning hath never been very nicely scanned, so as to require a man to go the direct road: and the protection is not forfeited by the plea of going our of the way, because it may be the party went to buy a horse, victuals, or other necessaries for his journey. Neither is the law so strict in point of time, as to require a person to fer out immediately after the trial is over; and for that was cited the case of Hatch and Blisset, T. 13 An. She had a trial at Winchester assizes, which was over on Friday at 4 in the afternoon: the staid there till after dinner on Saturday; and in the evening at 7 was arrested going home to Portsmouth, which is 20 miles: and the court held, that she ought to be discharged, her protection not being expired, and a little deviation or loitering would not alter Str. 987.

8. By the 22 G. 2. c. 46. No person shall act as solicitor, at- Who shall act torney, or agent, or fue out any process at any general or quarter in the seffions as solicitor. lessions, either with respect to matters of a criminal or civil nature, unless he is admitted and inrolled according to law; on pain of 50% to him who shall sue in 12 months, with treble costs: And if any attorney shall permit any person to make use of his name in the faid court, he shall in like manner forfeit 50 1.

And no clerk of the peace, under-sheriff, or their deputies, shall act as solicitor, attorney, or agent, or sue out any process at fuch fessions, on the like pain of 50%.

9. Where authority is given to two justices to do any act, the The sessions may seffions may do it, in all cases, except where appeal is directed to do what two justices may. the fessions, L. Raym. 426.

10. Justices may issue their warrants for apprehending persons Justices may charged of crimes within the cognizance of the fessions, and bind bind over for them over to appear there, altho' the offender be not yet indicted. offences cogni-1 H. H. 579.

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Need not give their reasons.

Orders may be altered the fame feffions.

Court equally divided.

11. If jurisdiction be given to the sessions, to hear and determine, and doth not fay by information, this shall be by indictment, and not upon information. Dalt. c. 191.

12. The fessions are not obliged to give any reason of their judgment in the orders they make, no more than any other of

the courts of law.

courts of law. 2 Salk. 607.

13. By Holt Ch. J. The sessions is all as one day, and the justices may alter their judgments at any time whilst it continues. 2 Salk. 606.

14. In the case of Thornby and Fleetwood, T. 6 G. (which 'takes up above 60 pages in Sir John Strange's reports; which was upon a writ of error in the king's bench brought against a judgment given in the court of common pleas) the court was equally divided; whereupon it was confidered what was further to be done. And after feveral expedients, which were judged impracticable, the parties at last consented that the judgment should be affirmed, so that the case thereupon might come before the house of lords for a final determination. And Pratt Ch. J. delivered the opinion of the court thus: The plaintiffs in error move us for an affirmance: as to that you fee the court is divided, and there can be no rule: but in this case, because the party against whom it is to be affirmed, is defirous and willing it should be so, we are all of opinion that upon his confent the judgment of the common pleas may be affirmed. But left this be brought in future ages as a precedent of an affirmance upon a division, we direct the officer to make the rule special in this case, on recital of the difference in opinion amongst the judges, and the consent of the party.

Str. 383, 4.
T. 8 G. 2. K. and the justices of Westmortand. Order of two justices of the borough for removing a poor family; appeal to the fessions of the county, at which the justices were equally divided; so no determination was made, nor the appeal adjourned. A mandamus was directed to all the justices of the county in general, to proceed on the appeal, And it was faid, that the justices ought in this case to have adjourned the appeal, or continued it over to a subsequent sessions, till by the coming of more justices it might have been determined. Sess. C. V. 2. 193.

Or if the court shall be still divided, as so it may happen in fmall counties or towns corporate where the justices are but few, or where the number is reduced by reason of the rest being interested; in order that the cause may not be hung up for ever, it may be advisable (according to the course prescribed in the case of Thornby and Fleetwood abovementioned) for the court, by consent of the parties, to affirm or quash, and thereupon state the case specially, to be laid before the judges of affize, or rather before the court of king's bench; for the judges of affize are oftentimes fufficiently employed with the proper business of the circuit, without being importuned with these matters of inferior confe-

Seffions cannot refer.

19. A judge of nisi prius by consent of parties may make a rule to refer a cause; but the sessions cannot do so, tho' by confent. They may refer a thing to another to examine, and make

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report to them for their determination, but cannot refer a thing to be determined by the other. 2 Salk. 477.

16. It seemeth certain, that the sessions hath no authority to How far the amerce any justice, for his non-attendance at the fessions, as the fessions bath judges of affize may for the absence of any such justice at the power over its gaol delivery: for it is a general rule, that inter pares non eft poteffas, it being reasonable rather to refer the punishment of perfons in a judicial office, in relation to their behaviour in such office, to other judges of a superior station, than to those of the fame rank with themselves. And therefore it seems to have been holden, that if a justice at the sessions, who is not of the Quorum, shall use such expressions towards another who is of the Quorum, for which if he were a private person he might be committed or bound to his good behaviour, yet the fessions hath no authority to commit him, or to bind him to his good behaviour: And yet it feems to be agreed, that if a justice give just cause to any person to demand the surety of the peace against him, he may be compelled by any other justice to find such security; for the publick peace requires an immediate remedy in all such cases.

2 Haw. 41, 42. 17. The sessions may proceed to outlawry in cases of indict- whether they ments found before them; and that, by the common law: and may iffue a cain cases of popular actions, by the statute of the 21 J. c. 4. But pias utlagatum. they cannot issue a capias utlagatum, but must return the record of the outlawry into the king's bench, and there process of ca-pias utlagatum shall issue. 2 H. H. 52. Lamb. 521. But by the 12 Co. 103. They that have power to award pro-

cess of outlawry, have also a power to award a capias utlagatum,

as incident to their authority and jurisdiction.

18. Generally, the feffions cannot award an attachment for Whether they contempt in not complying with their orders; but the ordinary may award an and proper method is by indictment. H. 8 G. 2. K. and Bartlett. attachment. Seff. C. V. 2. 176.

19. The justices are not punishable for what they do in sef- Justices not pu-

fions. Stam. 173.

ns. Stam. 173.

20. The manner of proceeding at the fessions, is as follows: what is done in fessions. First, the justices being met, the usual course is with 3 oyes to Manner of proproclaim the fessions, and then read the commission of the peace. deeding in sei-Dalt. c. 185.

21. Then the grand jury are called and fworn, and the charge Commission read.

given to them.

22. If there be any who are to take the oaths, in order to sworn. qualify them for offices, this must be done between the hours of Taking oaths. 9 and 12 in the forenoon, and not otherwise. 25 C. 2. c. 2. s. 2.

23. The king's proclamation against profaneness and immora. Acts to be read. lity is also to be read; and likewise there are divers acts of parliament required to be read in the sessions, as the 5 El. c. 1. against popery, and the riot act 1 G. c. 5. and the black act 9 G. c. 22. And the 11 & 12 W. c. 15. about ale measures, 30 C. 2. c. 3. about burying in woollen, are required to be given in charge at the fessions. And the 4 & 5 W. c. 24. 7 & 8 W. c. 32. 3 & 4 An. c. 18. and 3 G. 2. c. 25. concerning jurors, are

Grand jury

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to be read in Midsummer sessions yearly. And the 2 G. 2. c. 24. against bribery and corruption in elections of members of parliament is to be read at every Easter sessions.

Recognizances to give evidence

Trying for felenies at the fame feffions.

24. Then the recognizances may be called, especially such as are to profecute and give evidence, that fo bills may be drawn and prepared. Dalt. c. 185.

25. Altho' it is in many places used, to try a man for felony the same sessions in which the indictment is found, yet it seems highly reasonable, if the prisoner desire it to be deferred, and shew cause probable, to deser it. For that, 1. The sessions are holden oftner than the assizes. 2. The speedy trials seem to be in favour of the prisoner, and volenti non fit injuria. 3. If a traverse upon an indictment of nusance be not triable the same fessions that it is joined, but a man shall have time to provide for it; much more in matter of life, where usually the party is in prison, and may well be supposed less able to provide for it, and in the nature of it requires greater confideration. Dalt. c. 185.

And, in another place, it is faid, that it is made a doubt, whether a trial can be had of a felon the same settions he pleads,

unless he consents to it. Dalt. c. 185.

Bills before the grand jury.

Other bufiness

jury are gone

out; fuch as

motions, ap-

peals, recogni-

Errors in form to be amended.

Certificates of

nusances re-

moved.

26. The bills being ready, the parties bound over for that purpose are sworn to give evidence upon the bills; and the course is, to bid the evidence go with the grand jury, where they confider of the bill, and either find it or not find it, and then return it. id.

27. Whilst the jury is gone out of court, the usual way is, to whilst the grand proceed upon motions and orders touching fettlements, bastardy, nusances, and the like; and to call persons bound over to the peace or good behaviour, but it may not be best to discharge them till the end of the fessions, because bills may be preferred against

28. Upon appeals to be made to the fessions against judgments or orders, the justices shall cause any defect of form in such ori-

ginal judgments or orders, to be rectified and amended, and then shall proceed upon the merits. 5 G. 2. c. 19. f. 1.

29. Mr. Shaw (Tit. Seffions) says, no indictment for a nufance shall be quashed or discharged, unless two justices do certify to the court upon their own view, either by certificate under their hands or in person, that the nusance is removed; and for this he quotes 3 Cro. 584. Layton's case. But that case only mentions a certificate in general, and the certificate in that case was not a certificate of two justices, but of several inhabitants adjoining; and it should seem that the sessions may be well satisfied of such removal of a nusance, by other evidence, as well as by that of two justices.

Traverses tried.

30. Then may be called the persons bound by recognizance at the last sessions, to prosecute their traverses at the present sessions. For if a person indicted of a trespass or other misdemeanor, do appear, and shall plead not guilty, and traverse the indictment, he shall enter into recognizance to prosecute his traverse at the next quarter fessions. For in Bumstead's case, 11 C. The whole court was of opinion, that justices of the peace may not inquire,

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try, and determine civil offences, in one and the fame day; for the party ought to have a convenient time to provide for the trial. Cro. Car. 448.

And on the trial of a traverse, the defendant must appear in the court, at the bar, in his proper person; and then the indictment is read to the jury; and the prosecutor and his witnesses are called to give evidence, and are heard; and if the defendant is found guilty, the court sets a fine upon him adequate to the offence, or other punishment as the law directs. Crown Cir. 50, 51.

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In case of trespass and assault, the court frequently recommends the defendants to talk with the prosecutor, that is, to make him amends for the injury done him; and if the prosecutor comes and acknowledges a satisfaction received, the court will set a small sine on the defendant, as 35. 4 d. or 12 d. Cro. Cir. 52.

Sometimes the profecutor and defendant agree, before the defendant pleads to the indictment; and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving, by a subscribing witness, a general release executed by the prosecutor, the defendant submits to a small sine, such as the court is pleased to impose. Cro. Cir. 52.

There are frequent profecutions at the fellions for trifling affaults, in which cases it is advisable for a defendant not to put himself to the expence of trying the indictment; but to give notice to the profecutor, that he intends to plead guilty to the indictment; in which case the profecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his misbehaviour towards the profecutor: But before that is done, the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation. Cro. Cir. 54.

31. And because the arraignment and trial of prisoners is a Trial for petit great part of the business of the sessions, I will take notice of larceny and some parts thereof, and proceedings thereupon:

Towards the end of the fessions, when it appears what bills Arraignments are come in against the prisoners, the gaoler being called to set his prisoners to the bar, and the crier being called to make a bar, that is, to dispose of the company, that a way be made open from the court to the prisoners, that the court, jury, and prisoners may see each other, one of the prisoners is called to; A. B. hold up thy hand. Dalt. c. 185.

Yet it is not necessary that he hold up his hand at the bar, or Holding up the be commanded so to do; for this is only a ceremony, for making hand. known the person of the prisoner to the court, and if he answers that he is the same person, it is all one. 2 Haw. 308.

If he make no answer at all, and will not plead, it is best to Mute. ask him three or more times, and to tell him the danger of standing mute, and the grievousness of the judgment of the peins fort

# Sellions.

& dure; and yet if he will stand mute, nothing more can be done concerning him till judgment, but to record it.

But if it be for petit larceny only, he shall not be put to his peine fort & dure, as in case of grand larceny, but he shall have the like judgment as if he had confessed the indictment. 2 Haw,

Privilege.

If he pleads privilege, it hath been adjudged, that where proceedings are merely at the fuit of the king, as upon indictment, or upon information brought by the attorney general, no privilege shall be allowed; but where the proceedings are at the fuit of the king and of the party, as in case of a common informer, there the defendant may have his privilege. I Lutw. 62.

If he answer that he is guilty, then the confession is recorded,

Trial by the country.

Humanity to-

wards the pri-

foner.

Confession.

and no more done till judgment. Dalt. c. 185. But if he fay, not guilty, he is then asked; culp prit, how ilt thou be tried? Dalt. c. 185.

wilt thou be tried? Which was formerly a very fignificant question, tho' it is not fo now; because anciently trial by battel, and trial by ordeal was used, as well as by the country, or a jury.

Therefore it is now usually answered, By god and the country.

Dalt. c. 185.

Mr. Hawkins observes, that every person at the time of his arraignment, ought to be used with all the humanity and gentleness which is confistent with the nature of the thing, and under no other terror or uneafiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances; and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unless there be some danger of a rescous or escape. 2 Haw. 308.

And the court ought to exhort him to answer without fear, and to acquaint him that he shall have justice done to him.

316.

Witneffes called.

Next, the prisoner having put himself upon his country, the profecutors are called on their recognizances to give evidence.

Dalt. c. 185.

Jury called.

Then the jury are called on their panel, thus, You good men that are returned and impanelled, to try the iffue joined between our fovereign lord the king, and the prisoner at the bar, answer to your names. Dalt. c. 185.

Proclamation.

Which done, and they appearing a full jury, a proclamation is made; If any can inform the king's attorney, or this court, of any treasons, murders, felonies, or other misdemeanors against A. B. the prisoner at the bar, let them come forth, for the pri-

foner stands upon his deliverance. Dalt. c. 185.

Challenge.

Then it is faid to the prisoner, You prisoner at the bar, the persons that you shall now hear called, are to pass upon your trial (upon your life and death, if it is a capital offence); if you will challenge them, or any of them, you must challenge them as they come to the book to be fworn, and before they be fworn. Dalt. c. 185.

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Then call the foreman of the jury, and fay unto him, Lay Jury swornyour hand on the book, and look upon the prisoner; You shall well and truly try, and true deliverance make, between our sovereign lord the king, and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to your evidence: So help you god.

Then call the fecond, and fo fwear him in like manner, and fo

on to 12, and neither more nor less. 2 H. H. 293.

Then count them 12, and fay, You good men that are fworn, Jury charged. you shall understand, that A. B. now prisoner at the bar, stands indicted, for that he ---- (and so recite the indictment): To which indictment he hath pleaded not guilty, and for his trial hath put himself upon god and the country, which country you are; so that your charge is, to inquire whether he be guilty of the felony or petit larceny whereof he stands indicted, or not guilty; If you find him guilty, you shall fay so, and inquire what goods and chattels he had at the time of the faid felony and petit larceny committed, or at any time fince: (Or, if it be for felony above petit larceny, - then, what goods and chattels, lands and tenements he had at the time of the faid felony committed, or at any time fince:) If you find him not guilty, you shall inquire, whether he did fly for it, and if you find that he fled for it, you shall inquire what goods and chattels he had at the time of fuch flight. If you find him not guilty, and that he did not fly for it, you shall say so, and no more: and so hear your evidence. 2 H. H. 293, 294. Dalt. c. 185.

Then call the witnesses, and swear them, one by one, thus: Witnesses sworm.

The evidence that you shall give on the behalf of our sovereign lord the king, against A. B. prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So belp you god. Dalt.

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When the witnesses for the king have been examined, if the Witnesses for prisoner desires that any witnesses should be examined for him, the prisoner.

they must be examined also on oath.

On trials of this nature, the prisoner shall not have counsel Prisoner not to allowed to him, unless a point of law arise, proper to be de-have counsel. bated; nor a copy of the indictment. 2 Hago, 400, 402.

But in offences under felony, a defendant may be heard by his

counsel. Wood 1098.

Otherwise, the court is to be of counsel with the prisoner, and Court to be of ought to advise him for his good, and not take advantages too counsel with him.

strictly against him Dalt. c. 185.

When the prisoner hath done, and hath been heard all he hath Evidence sumto say in his defence, the evidence is summed up by the court to med up. the jury. And if they cannot agree on their verdict at the bar, a bailiff must be sworn to keep the jury, thus; You shall swear that you shall keep this jury, without meat, drink, fire, or candle; you shall suffer none to speak to them, neither shall you speak to them your self, but only to ask them whether they are agreed; So help you god. id.

The jury coming back, the prisoner is brought to the bar; Verdict. then the jury is called; they appearing, say, Set A. B. to the

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bar; Who being there, fay, Look upon the prisoner; how say you, is A. B. guilty of the felony (or as the case is) whereof he stands indicted, or not guilty? If they say, not guilty, bid him down upon his knees. If they say, guilty; record it, and bid him be taken away. Then say, hearken to the verdict as the court hath recorded it; You say, A. B. is guilty [or, is not guilty] of the selony whereof he stands indicted. id.

Then make a proclamation and fay, All manner of persons keep filence, whilst judgment is giving against the prisoner at the bar, upon pain of imprisonment. Then set the prisoner to the

bar, and give the sentence. id.

32. By the 12 R. 2. c. 10. The justices shall take for their wages 45. the day for the time of their sessions, and their clerk 25. of the fines and amerciaments rising and coming of the same sessions, by the hands of the sheriffs. And the lords of franchises shall be contributary to the said wages, after the rate of their part of sines and amerciaments.

But no duke, earl, baron, or baneret, shall take any wages.

14 R. 2. c. 11.

And the estreats of the justices shall be doubled, and the one part delivered by them to the sheriff, to levy the money thereof rising, and thereof to pay the justices their wages by the hand of the sheriff, by indenture betwixt them thereof to be made.

14 R. 2. c. 11.

33. The fees in fessions for traversing, trying, or discharging indictments, discharging recognizances of the peace and good behaviour, and the like, do vary according to the custom of the country; and in that place the custom of the place is to be observed. Dalt. c. 41.

By Holt Ch. J. The court cannot commit for non-payment of fees; for if there is right, there is remedy; and indebitatus affumpfit will lie, if the fee is certain; if uncertain, quantum meruit.

L. Raym. 703.

## Precept to fummon the fessions.

Westmorland. J. P. and K. P. esquires, justices of our sovereign lord the king, assigned to keep the peace in the county of — aforesaid, and also to bear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and one of us the Quorum; To the sheriff of the same county, greeting: On the behalf of our said sovereign lord the king, we command you, that you omit not by reason of any liberty within your county, but that you enter therein, and that you cause to come before us, or others, justices assigned to keep the peace in the said county, and also to bear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on — the day of — now next ensuing, at the hour of ten in the forenoon of the same day, at — in the said county, 24 good and lawful men of the body of the county aforesaid, then and there to inquire, present, do and perform, all and singular such things, which on the schalf of our said sovereign lord the king shall be injoined them.

Judgment.

Wages of the justices, and offreats.

Fees in fessions.

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ful ful ire, the m: Also that you make known to all coroners, keepers of gaols and of houses of correction, high constables, and bailiffs of liberties, within the county aforesaid, that they be then there to do and sulfil those things which by reason of their offices shall be to be done: Moreover, that you cause to be proclaimed thro' the said county in proper places the aforesaid sessions of the peace to be held at the day and place aforesaid: And do you be then there, to do and execute those things which belong to your office: And have you then there as well the names of the jurors, coroners, keepers of gaols, and of houses of correction, high constables, and bailiss aforesaid, as also this precept. Given under our seals at A. in the county aforesaid, the \_\_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of \_\_\_\_\_\_

When the sheriff hath received this precept, he must direct several warrants to the several bailists of hundreds and liberties, containing in them the substance of the said precept.

#### The stile of the sessions.

Westmorland. THE general quarter sessions of the peace, holden at——in and for the said county, on the day of ——in the——year of the reign of our sovereign lord George the second, of Great Britain, France, and Ireland, king, defender of the saith, and so forth, before J. P. and K. P. esquires, and others, justices of our said sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers selonies, trespasses, and other misdemeanors in the said county committed, and of the Quorum, and so forth.

Note, It is not sufficient to say, held at such a place such a day by adjournment; but it must appear when the original sufficient began, and that it was regularly continued to such adjournment. Str. 832, 865.

Condition of a recognizance to appear and give evidence at the fessions, in case where the king is a party.

# Sellions.

Subpana to give evidence, in case where the king is not party.

To A. W. B. W. and C. W. EORGE the Secondyeomen, greeting. We command you, and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the county of \_\_\_\_\_ and also to bear and determine divers felonies, trespasses, and other misdemeanors in our said county committed, at the session of the peace to be bolden at -in and for the said county, on \_\_\_\_ the \_\_\_ day of now next ensuing, at the hour of ten in the forenoon of the same day, to testify all and fingular those things, which you, or any of you, shall know, in a certain appeal now depending between the church. wardens and overfeers of the poor of the parish of appellants, and the churchwardens and overfeers of the poor of the parish of -- removants, touching and concerning the removal of A. P. from the faid parish of - [Or, in case where the king is a party, - to testify the truth and give evidence on our behalf, against A.O. in a case of trespass and assault] And this you and every of you are in no wife to omit, under the penalty of 101. for you and every of you. Witness J. P. esquire, the - day of -

Note; There may be four witnesses put in one subpæna.

### A subpana ticket for a witness.

R. A.W. By virtue of a writ of subpoena, to you and others directed, and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace to be holden at — in and for the county of—to testify the truth according to your knowledge in a certain appeal now depending, between the churchwardens and overseers of the poor of the parish of — appellants, and the churchwardens and overseers of the poor of the parish of — removants, concerning the removal of A. P. from the said parish of — to the said parish of — on the part of the said appellants: And herein you are not to fail, on pain of 101. Dated the — day of — in the — year —

# Sewers.

By the 23 H. 8. c. 5. Commissions of sewers shall be issued, in all parts of the realm, where need shall require.

And by the 13 El. c. 9. For one year after the expiration of a commission of sewers, the justices of the peace, or six of them,

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(2 2.) may execute the powers of the faid commission, unless a new commission shall be issued in the mean time.

But as the power and authority of these commissioners of sewers is not general enough to fall in with the design of this book, I shall chuse to refer those whom it may particularly concern, to the statutes at large which treat of this title; namely

23 H. 8. c. 5. 25 H. 8. c. 10. 3 & 4 Ed. 6. c. 8. 7 An. c. 10.

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Besides which general acts, there are others which concern the cities of London and Westminster only, and other places within the bills of mortality; to wit,

3 J. c. 14. 19 C. 2. c. 3. f. 20. 22 & 23 C. 2. c. 17. 2 W. feff. 2. c. 8. 8 & 9 W. c. 37.

# Sheep.

BY the 25 H. 8. c. 13. For the preventing many farms be-None shall have ing accumulated into few hands, and for the encourage-above 2000 ment of tillage, it is enacted, that no person shall have above sheep 2000 sheep at one time, at six score to the hundred, except it be upon his own inheritance only, and except what are necessary for his houshold; on pain of forseiting 3 s. 4 d. for every sheep above that number, half to the king, and half to him that will sue.

And if any person shall happen to have more, by reason of being executor or administrator, he shall sell off within a year, till he have but 2000.

But sheep bequeathed to a child within age, shall not be reckoned in the number.

And lambs are not to be reckoned sheep, till the second Midfummer after they are lambed.

And the justices of the peace may enquire of this offence by a jury, or by information.

2. And for the same reason, no person shall take above two None shall have farms with houses thereon; nor shall any person have two, except above two sarms. he dwell in the parish where they both are; on pain of 3 s. 4 d. a week in like manner. id.

3. By the 8 El. c. 3. No person shall send or carry over sea, Carrying sheep or receive into any ship for that purpose, any sheep alive; on pain over sea. for the first offence, of forseiting all his goods, half to the king, and half to him that will sue, and being imprisoned for a year, and at the year's end in some open market town, in the sulness of

the

the market, on the market day, he shall have his left hand cut off. and nailed up in the openest place of the market; And for the fecond offence, shall be adjudged a felon, and shall suffer death as in cases of felony; But not to work corruption of blood. And the justices of the peace may enquire of, hear and determine

But the offender may have his clergy, as well in the case of the cutting off his hand, as in the case of felony. 3 Inst. 104.

And by the 12 C. 2. c. 32. No person shall export, or lay on board with intent to export any sheep, except wether sheep for the ship's use only; on pain of forfeiting the same, and for every sheep 20 s. half to the king, and half to him that shall sue, at the fessions, or elsewhere. And the owner of the ship, knowing the offence, shall forfeit his interest in the ship and furniture. And the master and mariners assisting, shall forfeit, in like manner, all their goods and chattels, and be imprisoned three months. And any merchant or other person offending herein, shall be disabled to require any debt or account from any factor or other. And the offender may be tried in the county from whence they were exported, or where he shall be apprehended. Prosecution to be in one year. And if the ship belongs to an alien, it shall be forfeited to the king.

Killing sheep in the night.

4. If any person shall in the night time maliciously and willingly kill any sheep; he shall be guilty of felony: but to avoid judgment of death, he may make his election to be transported for seven years. And three justices (12.) may hear and determine the same. 22 & 23 C. 2. f. 7.

Hurting fheep in the night.

Sheep Realing

wward.

5. If any person shall in the night time maliciously and willingly maim, wound, or otherwise hurt any sheep, whereby the fame is not killed; he shall forfeit to the party grieved treble damages, by action of trespass or on the case. 22 3 23 C. 2. c. 7.

6. If any person shall feloniously drive away, or in any other or killing, 10 l. manner feloniously steal any sheep or lamb; or shall wilfully kill any sheep or lamb, with a felonious intent to steal the carcase or any part thereof; or shall assist or aid in committing any the said offences; he shall be guilty of felony without benefit of clergy.

14 G. 2. c. 6. f. 1. 15 G. 2. c. 34.

And every person, who shall apprehend and prosecute to conviction any such offender, shall have a reward of 10% In order to which, he shall have a certificate figned by the judge, before the end of the affizes, certifying fuch conviction, and where the offence was committed, and that the offender was apprehended and profecuted by the person claiming the reward; and if more than one claim the reward, he shall therein appoint what share shall be paid to each claimant: Which certificate being tendred to the sheriff, he shall pay the same within a month, without deduction, on pain of forfeiting double, with treble costs: The fame to be allowed on his accounts, or to be repaid him out of the treasury. 14 G. 2. c. 7. f. 2, 3.

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2. By four several statutes it is enacted, that none shall be sheriss, Who shall be except he have sufficient land within the shire, to answer the king sheriss. and his people. 9 Ed. 2. st. 4 Ed. 3. c. 9. 5 Ed. 3. c. 4.

13 & 14 C. 2. c. 21.

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3. At the common law, the sheriff was chosen by the county; How chosen, but now by the statute of the 14 Ed. 3. c. 7. he shall be appointed yearly on the morrow of All Souls, at the exchequer, by the chancellor, treasurer, and chief baron, taking to them the chief justices.

Except in London, and where the office is a man's freehold or

inheritance. 23 H. 6. c. 8.

4. The sheriff (except in Wales and Chester) at the entring His oath of of upon his office shall take the following oath (to be administred in

pursuance of a writ of dedimus potestatem);

I A.B. do swear, that I will well and truly serve the king's majesty in the office of sheriff in the county of - and promote his mojesty's profit in all things that belong to my office, as far as I legally can or may; I will truly preserve the king's rights, and all that belongeth to the crown; I will not affent to decrease, lessen, or conceal the king's right, or the rights of his franchises; And whensower I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franthifes, fuits, or fervices, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if I may not do it my self, I will certify and inform the king thereof, or some of his judges; I will not respite or delay to levy the king's debts, for any gift, promise, reward, or favour, where I may raise the same without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man, for any gift, reward, or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the exchequer, all those of whom I shall receive any debts or VOL. II.

# Sheriff.

duties belonging to the crown; I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured, or delayed; I will truly return, and truly ferve all the king's writs, according to the best of my skill and knowledge; I will take no bailiffs into my service, but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their bustness and occupation; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm; I have not fold or let to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor swill I sell or let to farm, nor contract for, or grant for reward or benefit, by my self or any other person for me, or for my use, directly or indirectly, my sheriffwick, or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons what soever; I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave my felf in my office, for the honour of the king, and the good of his subjects, and discharge the same according to the best of my skill and power: So help me god. 3 G. c. 15. f. 18, 19.

Sheriff felling interior offices.

By the 4 H. 4. c. 5. The sheriff in person shall continue

within his bailiwick, and shall not let it to farm.

And by the 3 G. c. 15. f. 10. None shall buy, sell, let, or take to farm the office of under sheriff, gaoler, bailiff, or other office pertaining to the office of high sheriff; on pain of 500 l. half to the king, and half to him that shall sue (in two years).

Sheriff's officers not to be attornies, or jurors.

6. By the 1. H. 5. c. 4. Sheriff's officers shall not be attornies. And the sheriff shall return none of his officers upon inquests; on pain of 40 /. half to the king, and half to him that shall sue, in the fessions, or elsewhere. 23 H. 6. c. 10.

Appointment of

7. The under sheriff shall be appointed by the high sheriff, bethe under sheriff. cause he shall answer for him; and he shall take the like oath as the high sheriff, mutatis mutandis. 3 G. c. 15. J. 19.

Appointment of bailiffs.

8. The bailiffs also shall be appointed by him for the like reafon; and every bailiff, when he gives fecurity upon entring into his office, shall make it part of the condition of such fecurity, that he will deliver a copy of the clause in the act of the 2 G. z. c. 22. concerning the carrying of prisoners for debt to alehouses, which is inferted more at large in title Gaoter.

And such bailiff, or other person returning juries, or intermeddling with processes, shall take the following oath of office, before a judge of affize, or the cuftos rotulorum, or two justices of the

peace (12.);

I A. B. Shall not use or exercise the office of bailiff corruptly, during the time that I shall remain therein, neither shall or will accept, receive, or take, by any colour, means, or device whatfoever, or confent to the taking of any manner of fee or reward of any person or persons, for the impanelling or returning of any inquest, jury, or tales, in any court of record, for the king, or betwixt party and party, above 2 s. or the value thereof, or such fees as are allowed and appointed for the same by the laws and statutes of this realn conve writ. office, me go A

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give abu juft 2 1 realm, but will according to my power, truly and indifferently, with convenient speed, impanel all jurors, and return all such writ or writs touching the same, as shall appertain to be done by my duty or office, during the time that I shall remain in the said office: So belp me god. 27 El. C. 12. f. 2.

And persons acting before they have taken the faid oath, shall forfeit 40 l. half to the king, and half to him that shall sue, in

the sessions, or other court of record. id. f. 4, 6.

And if they commit any act contrary to their faid oath, they shall forfeit (in like manner) to the party grieved his treble da-

mages. id. f. 5.

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And the sheriff's bailiffs shall not be in the same office in three years after. 1 H. 5. c. 4. Except in London, Middlesex, Durham, Welmorland, and towns being counties of themselves. 3 G. c. 15.

9. The sheriff hath a jurisdiction both in criminal and civil The sheriff's cases; and for this purpose he hath two courts, his tourn for cri two courts; the minal causes, which is therefore the king's court; the other is torn, and county his county court for civil causes, and this is the court of the sheriff court.

3 Salk. 322.

10. The new sheriff being appointed and sworn, he ought at or Sheriff's receibefore the next county court, to deliver a writ of discharge to the ving the acold sheriff, who is to set over all the prisoners in the gaol severally counts of his by their names (together with all his writs), precifely, by view and predeceffor. indenture between the two sheriffs; wherein must be comprehended all the actions which the old sheriff hath against every prisoner, tho' the executions are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff, notwithstanding the letters patents of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol only. But the office of the old sheriff ceases, when the writ of discharge cometh to him. Wood 119.

And by the 20 G. 2. c. 37. The old sheriff shall turn over to his successor, by indenture and schedule, all such writs and process as shall remain unexecuted; and the new sheriff shall execute and

return the fame.

11. The sheriff having a justice of the peace his warrant di- Sheriff how far rected to him, shall execute the same; but he need not go in amenable to the person to execute it, but may authorize another to do it. 2 Haw. peace.

And it is no excuse to the sheriff to return that he could not execute a precept because of resistance; for he may take with him the power of the county. 13 Ed. 1. ft. 1. c. 39.

Also the sheriff, on summons, is bound to attend the sessions of the peace, there to return his precepts, to take the charge of the prisoners, to receive fines for the king, and the like. 2 Haw. 41.

And it feems clear from the general reason of the law, which gives all courts of record a kind of discretionary power over all abuses by their own officers, that the sheriff is punishable by the justices in sessions, for defaults in executing their writs and precepts. 2 Haw. 142, 143.

Ff 2

12. Every

Sheriff a confervator of the peace, but not to act as justice.

12. Every sheriff is a principal conservator of the peace, by the common law, and may ex officio award process of the peace, and take furety for it; and it seems to be the better opinion, that the fecurity fo taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 Hazv. 33.

But no theriff shall exercise the office of a justice of the peace. in any county wherein he is sheriff; and in such case, his acts as a

justice shall be void. 1 Mar. seff. 2. c. 8.

Sheriff to have the keeping of gaols.

13. By the 14 Ed. 3. c. 10. and 19 H. 7. c. 10. The sheriff

shall have the keeping of gaols.

And in all civil causes, as in cases of imprisonment for debt, the sheriff or gaoler (at the election of the party) shall be answerable for escapes suffered by the gaoler; but if the gaoler suffer a felon voluntarily to escape, this inasmuch as it reacheth to life, is felony only in the gaoler, but the sheriff may be indicted, fined, and imprisoned. 1 H. H. 597.

Sheriff answerable for money levied by him.

14. Where the sheriff levies money on a fieri facias, the plaintiff may have an action of debt against him for the money, because it was received by him to the plaintiff's use, and the defendant is discharged of it; and it lies against his executors if he die, 3 Salk. 323.

Paffing his accounts.

15. The manner of passing his accounts is directed at large by the statutes of the 3 G. c. 15 & 16. which, being foreign to our

purpose, are not here inserted.

Paying rewards for convicting offenders.

16. But after the sheriff hath paid the rewards for apprehending highwaymen, housebreakers, and such like, he shall not be obliged to tarry until the passing of his accounts for the repayment thereof, but he may immediately apply to the commissioners of the treasury, who shall upon inspecting the certificate of the conviction, and the receipts of the persons to whom the rewards were paid, forthwith repay the same to the sheriff without see. 3 G. c. 15. f. 4.

How long he

17. No sheriff shall continue in his office above one year. shall continue in 14 Ed. 3. c. 7. 28 Ed. 3. c. 7. Except in London, Middlesex, and towns being counties of themselves, and where the office is a man's freehold, or inheritance. 23 H. 6. c. 8. 3 G. c. 15. f. 21.

And by the 1 R. 2. c. 11. None that hath been sheriff shall be

fo again within 3 years, if there be other sufficient.

But by the 17 Ed. 4. c. 6. The sheriff may hold his office after the year, during Michaelmas and Hilary terms, if not before

lawfully discharged.

Sheriff dying

18. If the sheriff shall die before his office shall be expired, before the expi- the under sheriff shall execute the same in the deceased sheriff's ration of his of- name, till a new sheriff be sworn, and be answerable for the execution thereof, as the deceased sheriff would have been.

c. 15. f. 8.

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# Ships.

F any owner of, or captain, master, mariner, or other of- Wilfully deficer belonging to any ship, shall wilfully cast away, burn, stroying. or otherwise destroy the ship of which he is owner, or unto which he belongeth, or in any wife direct or procure the fame to be done; with intent to prejudice any person that shall underwrite any policy of infurance thereon, or any merchant that shall load goods thereon; he shall be guilty of felony without benefit of 11 G. c. 29. f. 6.

And if it is committed within the body of a county, it shall be trie! there; if on the high feas, it shall be tried as in cases of piracy.

And by the 20 G. 2. c. 52. The faid offence is excepted out of

the general pardon.

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2. By the 12 An. fl. 2. c. 18. and 26 G. 2. c. 19. If any Plundering or person shall plunder any ship in distress, or wilfully do any thing destroying a ship tending to the immediate loss of such ship; he shall be guilty of in distress. felony without benefit of clergy.

3. All persons who shall feloniously steal any goods of the value Stealing goods of 40s. in any ship, boat, or vessel, on any navigable river, or in from on shipany port of entry or discharge, or from any wharf or key, or shall be prefent and affifting therein; he shall be guilty of felony without benefit of clergy. 24 G. 2. c. 45.

# Shoemakers.

HE shoemakers duty in the true making of shoes, is inferted in the title Leather. Differences between shoemakers and their workmen, are treated of under the title Derbants.

# Silks.

HE duties on filks and callicoes, being under the same regulations with the duties on printed linens, the law concerning them is inferted under the article of linen cloth in the title Excife.

Concerning fervants and other workmen in the filken manufactures, fee title Derbants.

1. No person shall exercise the trade of a silk thrower, unless silk thrower he hath served 7 years apprenticeship; on pain of 40s. a month,

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half to the king, and half to him that shall fue in any court of record, or at the affizes, or quarter fessions of the peace. 14 C. 2. c. 15. f. 2.

Alamodes and luteftrings.

2. By the 9 & 10 W. c. 43. No foreign filks, called alamodes or lutestrings, shall be imported, but in the port of London, on notice first given to the commissioners of the customs, and licence had from them. f. 1.

And if they be imported elsewhere, or without such notice and licence, and the duties paid, they shall be forfeited, or the value thereof, and be fold and exported again; and the offender fo importing, and also the receiver, and person offering to sell the same, thall forfeit 500 l. f. 3.

And the commissioners shall cause them to be marked and

sealed.

And if any person shall counterfeit the custom house seal, or feal of the lutestring company; he shall forfeit 500 l. and be set in the pillory two hours. J. 5.

And any person who shall buy or sell or have in his custody any alamodes or lutestrings, sealed or marked with a counterfeit seal or

mark, shall forfeit the same and 500 l. f. 5.

And any person authorized by writ of assistance under the seal of the exchequer, or with a constable or other publick officer, inhabiting near the place, with a warrant from a justice of the peace, and in the day time, may enter any house, shop, cellar, warehouse, or other place, to fearch for and seize any alamodes or lutestrings imported contrary to this act, or not fealed or marked, or marked with a counterfeit mark or feal, and in case of resistance may break open doors, chests, trunks, and other package; and every justice shall grant such warrant to any credible person, making oath that he hath reason to suspect or believe, that there are some of the said filks so fraudulently imported, or not fealed and marked, or fealed or marked with a counterfeit feal or mark in the place or places where he intends to fearch.

And all officers belonging to the customs, sheriffs, mayors, bailiffs, constables, and other officers, shall be aiding in the execution

hereof. f. 6.

(But none but customhouse officers, or persons deputed by the lutestring company, and having writs of assistance from the exchequer, shall seize lutestrings or alamodes within the bills of mor-5 An. c. 20. f. 3.)

The faid penalties shall be two thirds to the king, and one third to him that shall seize or sue in any court of record. S. 9.

Sking. See Leather.

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# Slander.

Do not find it any where clearly fettled, how far flander, or fcandalous words, are cognizable before justices of the peace, by reason of the different circumstances in matters of so indeterminate a nature; for the same words, when spoken of different persons, and even of the same person with a different emphasis and manner of delivering them, may receive a very different interpretation.

In general, it feemeth that words which directly tend to a breach of the peace, as if one man challenge another, are cognizable before justices of the peace, for which the party may be bound to the good behaviour, and even indicted. 2 Salk. 698.

1 Keb. 931.

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But if they do not tend directly to a breach of the king's peace, but are matters only of private flander between party and party, which do no way affect the publick administration of justice, as in case where the common people are wont to call one another knaves, and rogues, and whores, and thieves; I do not find it afferted by any good authority, that justices of the peace have any jurisdiction at all in such matters; but the proper remedy seems to be in one of these two ways, either by a prosecution in the spiritual court, or by an action upon the case at common law.

In the former case, it is provided by the statute of Circumspecte agatis, 13 Ed. 1. and also by the statute of the 9 Ed. 2. c. 4. that in matters of defamation, no prohibition shall lie to the spiritual court from the courts temporal: But Bp. Gibson says, that in order to secure causes of defamation in the spiritual court, against prohibitions, they must have these two incidents; 1. That they concern matters merely spiritual. 2. That they concern mere spiritual matter only, and not mixt with any matter determinable at common law. And the prosecution in this court must be only for the punishment of sin, and the welfare of the soul; for the party cannot sue there for amends or damages. Cod. 1070.

But the remedy in such case (as hath been said) must be by action in the courts temporal, if the words will bear it: But it seems very difficu't, for the reasons above mentioned, to define what words are actionable, and what not. The most general rule seems to be, that words are then most properly actionable, when they are spoken of a person in relation to his profession or calling, and not when spoken at large without any such particular appli-

cation.

And by the 21 J. c. 16. Actions upon the case for slanderous words, shall be brought within two years after the words spoken, and not after; and if the jury find the damages under 40 s. the plaintiff shall have no more costs than damages.

But if the words spoken are not in themselves actionable, and damages are given to the plaintiff for a consequential loss only, there the plaintiff may have larger costs. And the distinction is F f 4 this:

## Slander.

this: The statute expressly mentions actions of flander; but if the words are such, as give the party an action in respect of the special damage resulting therefrom, and are not in themselves actionable, it is not properly an action of slander, but a special action on the case; and therefore is not within this statute. E. 12 G. 2. Bass and Hickford. Andr. 375.

M. 17 G. 2. Underwood and Parks. In an action for words, the defendant pleaded not guilty, and offered to prove the words to be true, in mitigation of damages; But Lee Ch J. refused to admit the same, saying, that at a meeting of all the judges upon a case that arose in the common pleas, a large majority of them had determined, not to allow it for the suture, but that it should be pleaded, whereby the plaintiss might be prepared to defend himself, as well as to prove the speaking of the words. Str. 1200.

Finally, there is one species of slander, of which the law takes a more especial notice; and that is, when it relates to the great men of the realm: Concerning whom, it is enacted by the 3 Ed. 1. c. 34. 2 R. 2. ft. 1. c. 5. and 12 R. 2. c. 11. that none shall tell or publish any false news or tales, whereby discord, or occasion of discord or slander may grow, between the king and his people, or the great men of the realm; and that none shall devise, speak, or tell any false news or lies, of any prelates, lords, judges, or other great men of the realm, whereof any discord or slander may arise; on pain of imprisonment, until he bath brought into court the first author of the tale; and if he cannot find the author, he shall be punished by advice of the council.

Publish any false news or tales] But this extends only to extrajudicial flanders; for if a man charge them in due course of law, altho' the charge be false, yet there will lie no action de scandalis magnatum, neither at common law, nor by these statutes. 2 Inst. 228.

Smugglers. See Ercise. Snares. See Game. Snuff. See Tobacco. Sodomy. See Buggery.

### Soldiers.

FOR foldiers inlifting into foreign service, fee title foreign

The ancient military order was, when the king was to be ferved with foldiers for his war, a knight or equire of the county, that had revenues, farmers, and tenants, would covenant with the king by indenture inrolled in the exchequer, to ferve the king for

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fuch a term with fo many men specially named in a list, in his war. I Inst. 71.

And in consequence hereof, there are many regulations by divers statutes concerning the same; which being now out of use, it is thought sufficient just to mention them; to wit,

18 H. 6. c. 19. 7 H. 7. c. 1. 3 H. 8. c. 5. 2 & 3 Ed. 6. c. 2. 4 & 5 P. & M. c. 3. 5 Ed. 6. c. 5.

But the present regulations concerning the soldiery (the militial excepted) are chiefly contained in the yearly acts against mutiny and desertion; the substance whereof is contained in the sollowing sections.

I. Articles of war.

II. Inlisting soldiers,

III. Muster.

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IV. Carriages.

V. Billeting.

VI. To remove in time of elections.

VII. Having wives or children, to be examined as to their settlement.

VIII. Destroying the game,

IX. Sued for debt.

X. Guilty of crimes,

XI. Pay.

XII. Deferting.

XIII. Setting up trades after their discharge.

XIV. Maintenance after their discharge.

XV. Probate of their wills.

### I. Articles of war.

The king may form articles of war for better government of the forces, and constitute courts martial, with power to try any crime by such articles of war. 28 G. 2. c. 4. f. 55.

But no person shall be adjudged to suffer any punishment extending to life or limb, by the said articles, except for crimes expressed to be so punishable by this act. s. 56.

### II. Inlisting soldiers.

When any person shall be inlisted, he shall in four days, but not fooner than 24 hours, be carried before the next justice, or chief magistrate of a town corporate (not being an officer in the army), and before him shall be at liberty to declare his diffent to fuch inlifting; and on fuch declaration, and returning the inlifting money, and paying 20 s. for the charges expended on him, he shall be forthwith discharged, in presence of such magistrate; But if he shall not in 24 hours return and pay such money as aforesaid, he shall be deemed to be inlisted, as if he had given his affent thereto before such magistrate. If he declare that he vo. luntarily inlifted himself, the justice or chief magistrate shall forthwith certify under his hand, that fuch person is duly inlisted, setting forth the place of his birth, age, and calling (if known), and that the fecond and fixth fections of the articles of war against mutiny and defertion were read to him, and that he has taken the oath mentioned in the faid articles of war: And if any person so certified as duly inlifted shall refuse to take the said oath of fidelity before fuch magistrate, the officer from whom he hath received fuch money, may detain and confine him till he shall take it: And every military officer that shall act contrary hereto, or offend herein, shall incur the like penalty as is by this act inflicted for making a false muster, to be recovered as any penalties by this act are recoverable. f. 71.

Which faid fecond and fixth fections of the articles of war are

thefe:

### (SECT. II.)

Art. 1. Whatsoever officer or soldier shall presume to use traiterous or disrespectful words against the sacred person of his majesty, his royal highness the prince of Wales, or any of the royal family; if a commissioned officer, he shall be cashiered; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inslicted upon him by the sentence of a court martial.

Art. 2. Any officer or foldier who shall behave himself with contempt or disrespect towards the general, or other commander in chief of our forces, or shall speak words tending to his hurt or dishonour, shall be punished according to the nature of his of-

fence, by the judgment of a court martial.

Art. 3. Any officer or foldier who shall begin, excite, cause or join in any mutiny or sedition, in the troop, company, or regiment, to which he belongs, or in any other troop or company in our service, or on any party, post, detachment, or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a court martial shall be inflicted.

Art. 4. Any officer, non-commissioned officer, or soldier, who being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same, or coming to the knowledge of

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any mutiny, or intended mutiny, does not without delay give information thereof to his commanding officer, shall be punished by a court martial with death, or otherwise, according to the nature of the offence.

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Art. 5. Any officer or foldier who shall strike his superior officer, or draw, or offer to draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his office, be inflicted upon him by the sentence of a court martial.

#### (SECT. VI.)

Art. 1. All officers and foldiers, who having received pay, or having been duly inlifted in our fervice, shall be convicted of having deserted the same, shall suffer death, or such other punishment as by a court martial shall be insticted.

Art. 2. Any non-commissioned officer or foldier, who shall, without leave from his commanding officer, absent himself from his troop or company, or from any detachment with which he shall be commanded, shall, upon being convicted thereof, be punished according to the nature of his offence, at the discretion of a court martial.

Art. 3. No non-commissioned officer or soldier shall inlist himfelf in any other regiment, troop, or company, in which he last served, on the penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately consine him, and give notice thereof to the corps in which he last served, he the said officer so offending shall by a court martial be cashiered.

Art. 4. Whatsoever officer or soldier shall be convicted of having advised or persuaded any other officer or soldier to desert our service, shall suffer such punishment as shall be inslicted upon him by the sentence of a court martial.

And the oath mentioned in the faid articles of war, is as follows:

I swear to be true to our sovereign lord king George, and to serve him honestly and faithfully, in defence of his person, crown, and dignity, against all his enemies or opposers what soever: And to observe and obey his majesty's orders, and the orders of the generals and officers set over me by his majesty.

And the justice's certificate of the whole may be this:

Westmorland. DO bereby certify, that A. S. of the age of

years, born at — in the county of

flooemaker, came this day before me — one of his majesty's justices of the peace for the said county of — and declared that on the — day of — now last past, he did wofuntarily inlist himself as a private soldier to serve his said majesty
king

# Soldiers.

king George the second, in the regiment of foot commanded by—and that he now freely consenteth unto the same: And thereupon I do bereby also certify, that he the said A. S. is duly inlisted as aforesaid; and that the second and sixth sections of the articles of war against mutiny and desertion were also before me read unto him this day, and that he hath also at the same time taken before me the oath mentioned in said articles of war. Given under my hand at——in the said county of——the——day of——

But if any person shall receive the inlisting money, knowing it to be such, and shall abscond, or refuse to go before such magistrate, in order to declare his affent or dissent, he shall be deemed to be listed, and may be proceeded against as if he had taken the said oath before such magistrate. 28 G. 2. c. 4. s. 72.

### III. Muster.

Every commissary or muster master, upon any muster to be made, shall give convenient notice thereof to the mayor, or other chief officer, of the place where the soldiers are quartered; who shall be present at every such muster: And every muster master neglecting to give such notice, or resusing the assistance of such mayor or other officer, shall forfeit 50 l. and his office. And no muster roll shall be allowed, unless signed by such mayor or other officer: But if such mayor or officer shall not attend, or resuse to sign such muster roll, without giving sufficient reason for such his resusal; then the commissary may proceed to muster, and such muster roll shall be allowed, tho not signed as aforesaid, provided that oath be made before a justice in 48 hours after such muster; and the said muster roll shall be then produced, and examined by the said justice, who shall sign the same, if there appear to be no sufficient objection to it. signed.

And in Westminster and Southwark, no muster shall be made; but in presence of two justices (not being officers of the army); unless the justices, on 48 hours notice to six of them, resuse to attend. f. 36.

And the commissary or muster master shall make oath (for which no fee shall be taken) before the mayor or chief magistrate attending the muster, if such mayor or chief magistrate be a justice of the peace, or otherwise before a justice in the form following; I A. B. do swear, that I saw at the time of making the within muster, such men or horses as are borne, and not respited, on the muster roll, for which men or horses a signed certificate or certificates are not indorsed on the back of the roll, certifying their being absent from the muster, by reason of being employed on some other duty of the regiment, or by being sick, in prison, or furlough, or at grass, or by a signed leave from the colonel or field officer, or officer commanding the regiment, troop, or company:

Which oath the faid commissary shall insert and subscribe on the back of the muster roll transmitted by him into the office of the commissary general of the musters. f. 18.

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And if any person shall give a false certificate, to excuse any soldier from muster or other service, on pretence of being employed on some other duty of the regiment, or of fickness, being in prison, or on furlough; he shall forfeit 50 1. and be cashiered and disabled to hold any military office. And no certificate shall excuse the absence of any soldier, but for the reasons abovementioned, or one of them; and the commissary shall set down on the roll, at the time of taking the muster, the reason of fuch absence, and by whom certified; and not to set down any fuch excuse, without view of such certificate. f. 12.

And every officer that shall make any false muster of man or horse, and every commissary, muster master, or other officer, who shall wittingly allow or fign the muster roll, wherein any such faife muster is contained, or shall take any reward for mustering or sign-

ing mutter rolls, shall be cashiered and disabled. f. 13.

And if any person shall be falsly mustered, or offer himself to be falfely mustered; on proof thereof by oath of two witnesses. before the next justice, and on certificate thereof under the hand of the commissary, or chief magistrate as aforesaid, he shall be committed to the house of correction for ten days: And if any person shall wittingly furnish a horse to be mustered, he shall be forseited to the informer, if he shall belong to the person furnishing the same; otherwise the offender shall forfeit to the informer 20 1. on oath by two witnesses, before the next justice, by distress; and if he shall have no sufficient distress, or shall not pay in four days after conviction, he shall be committed to the common gaol for three months, or be publickly whipped at the discretion of the justice; and the informer, if a foldier, shall be discharged. if he demands it. f. 16.

But fictitious names, allowed by his majesty's order upon the muster rolls, for the maintenance of widows of officers who lost their lives in the late war, or during the late rebellion, shall not

be construed a false muster. f. 14.

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### IV. Carriages.

For provision of carriages for the forces in their march, or for their arms, cloaths, and accoutrements, any justice of the peace, being duly required thereunto, by an order from his majesty, or the general of his forces, or the mafter general, or lieutenant general of his majesty's ordnance, shall on such order being brought and shewn unto him, by the quartermaster, adjutant, or other officer of the regiment, troop, or company ordered to march, iffue out his warrant to the constables or petty constables of the division, liberty, hundred, or precinct from, through, near, or to which such forces shall be ordered to march; requiring them to make such provision for carriages, with able men to drive the fame, as is mentioned in the faid warrant; allowing them sufficient time to do the same, that the neighbouring parts may not always bear the burden: And if sufficient carriages cannot be provided within any fuch liberty, division, or precinct; then the next justice (or justices) of the county, riding, or divi-

# Soldiers.

fion, shall on such order as aforesaid so brought or shewn to him. issue his warrant to the constables or petty constables of such next county, riding, division, or precinct, for the purposes aforesaid, to make up fuch deficiency. f. 42.

#### Which warrant may be thus:

# Westmorland. To the constable of -

general of bis majefly's Y virtue of an order from forces, this day brought and shown unto me bis majesty's justices of the peace for the said county, by foot, commanded by \_\_\_\_\_\_ you are hereby required to provide\_\_\_\_\_ fufficient carriages, with able men to drive the same, within your conflablewick, whereby to remove the arms, cloaths, and accoutrements of the said company on their march from Shap to Kirkby in Kendale in the faid county; and with them you are to appear at Shap aforefaid to morrow precisely at five of the clock in the morning. Herein fail you not, as you will answer the contrary at your peril. Given under my band and feal at - in the faid county, the in the -- year -

And the officer, who by virtue of the faid warrant, is to demand the carriages of the constable to whom it is directed, shall at the same time pay down to him in hand for the use of the perfons who shall provide such carriages and men, the sum of 11. for every mile any waggon with five horses shall travel; and 1 s. for every mile any wain with fix oxen, or four oxen with two horses shall travel; and 9 d. for every mile any cart with four horses shall travel; and so in proportion for less carriages: For which the conflable shall give a receipt. J. 42.

And fuch constable, or petty constable, shall appoint such perfons having carriages within their respective liberties, as they shall think proper, to provide and furnish such carriages and id. men.

And if any military officer shall force any carriage to travel more than one day's journey; or shall not discharge the same in due time for their return home; or shall suffer any soldier or fervant (except fuch as are fick), or any woman, to ride on fuch carriage; or shall force any constable, by threatnings, to provide faddle horfes for themselves or servants; or shall force horses from the owners, by themselves, servants, or soldiers; he shall forfeit 5 l. proof thereof being made on oath before two justices, who shall certify the same to the paymaster general, or other paymafter of the forces, who shall pay the same, according to the order of the faid justices under their hands and feals, who shall deduct the same out of the officer's pay. id.

And no waggon, wain, cart, or carriage, shall be obliged to

carry above twenty hundred weight. J. 46.

And if any high or petty constable shall wilfully neglect or refule to execute such warrants for providing carriages; or if any perfor man, perfo not e where deter thall !

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or f quar with person appointed by such constable to furnish any carriage and man, shall refuse or neglect to provide the same; or any other person shall wilfully hinder the execution thereof, he shall forfeit not exceeding 40 s. nor less than 20 s. to the poor of the parish where such offence shall be committed; the same to be heard and determined by two justices dwelling in or near the place, who shall cause the penalty to be levied by distress. f. 43.

And whereas the sums to be paid to the constables by the officers demanding carriages, are in many cases not sufficient to answer the charge and expence of providing the same to the great burden of the township, or else the persons performing such carriages are grievously oppressed; it is enacted, that the treasurer of the county shall without see pay unto such constable all reasonable sums by him laid out for carriages, over and above what was or ought to have been paid by the officer requiring such carriages, out of the publick stock, according to such rates and orders as the justices in sessions shall direct, which orders shall be made without see; regard being had to the season of the year, and the length and condition of the ways: and if the publick stock be not sufficient, the justices in sessions may raise money as for gaols and bridges. 

. 44, 45.

That is to fay, the same shall be paid out of the general county

rate, as directed by the 12 G. 2. c. 29.

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H. 3 G. K. against Hunt and others. The court granted a mandamus directed to the justices of the peace, to allow the defendants, being constables, the extraordinary charges in providing carriages on the late expedition into Scotland. Str. 42, 93.

#### V. Billeting.

By the 31 C. 2. c. 1. No officer, military or civil, nor any other person whatsoever, shall presume to place, quarter, or biller any soldier, on any subject or inhabitant of this realm, of any degree, quality, or profession whatsoever, without his consent; and every such subject or inhabitant may resuse to sojourn or quarter any soldier, notwithstanding any command,

order, warrant, or billeting whatever. f. 54.

But by the mutiny act, The constables and other chief officers and magistrates of cities, towns, villages, and other places, and in their default or absence, any one justice inhabiting in or near such place, and no others, shall and may quarter and billet the officers and soldiers in inns, livery stables, alehouses, victualling, houses, and all houses of persons selling brandy, strong waters, cyder, or metheglin, by retail, to be drank in houses (other than the houses of distillers and of shopkeepers, whose principal dealings shall be more in other goods than in brandy or strong waters, and who do not permit tippling in their houses) and no other, and in no private houses whatsoever; nor shall any more billers be ordered, than there are effective soldiers; and if any constable, or such like officer, or magistrate as aforesaid, shall presume to quarter or billet any such officer or soldier in any private house, without the consent of the owner or occupier, such owner or

occupier

officer for damages; and if any military officer shall take upon him to quarter soldiers otherwise than by this act, or shall offer any menace or compulsion, to any mayor, constable, or other civil officer before mentioned, tending to deter and discourage any of them from doing their duty, he shall on conviction before any two of the next justices, by the oath of two witnesses, be ipso fasto cashiered and disabled to hold any military employment; provided the conviction be affirmed at the next sessions, and a certificate thereof be transmitted to the judge advocate, who shall certify the same to the next court martial. And if any person shall be aggrieved by having more soldiers billeted than in proportion to his neighbours, on complaint thereof to one justice, or if the person so billeting them be a justice, then on complaint to two justices, they may relieve him. f. 24.

Note; the clause above recited, relating to shopkeepers, might as well be now omitted out of the act; for that by the 17 G. 2.

c. 17. no shopkeepers, as such, are allowed to retail any spirituous liquors, but only those who keep taverns, victualling houses,

inns, coffee houses, or alehouses.

But no justice, having any military command, shall be concerned in quartering soldiers under his immediate command; but all things done by him therein shall be void. 28 G. 2. c. 4.

f. 25.

And if any constable, or other officer, shall neglect his duty in billeting, for the space of two hours, provided sufficient notice hath been given before, of the arrival of the forces; or shall take any reward to excuse any person; or if any person liable shall resust to receive any foldiers, or to surnish them as required by this act; and be thereof convicted, before one justice, by consession or oath of one witness, he shall forseit 5 l. (or any sum not exceeding 5 l. nor less than 40 s.) by distress, by warrant of such justice, to be directed to any other constable, or to any overseer of the poor of the said place. f. 68.

And if any officer shall take any money of any person, for excusing the quartering of soldiers, he shall be cashiered and in-

capacitated. f. 28.

And if any officer, military or civil, shall quarter any of the wives, children, men, or maid servants of officer or soldier, in any house against the consent of the owner; if he is an officer of the army, he shall on proof made thereof to the commander in chief of the army, or judge advocate, be ipso facto cashiered; and if a constable, or other civil officer, he shall forfeit to the party grieved 20s. on proof thereof to the next justice, by distress. f. 48.

Officers and foldiers, billeted as aforesaid, shall be received and furnished with diet and small beer, paying for the same as hereafter is mentioned, out of their subsistence money. f. 26.

But if any person shall chuse rather to surnish them with candles, vinegar, and salt, and with either small beer or cyder, not exceeding five pints a day, gratis, and allow them the use of fire, and the necessary utensils for dressing and eating their meat,

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VII.

or chi tered, fhall of juffices and shall give notice thereof to the commanding officer, and shall furnish the same accordingly; in such case, they shall provide their own victuals, and the officers shall pay the sums out of the subsistence money for diet and small beer to such soldiers, and not to the persons on whom they are quartered; except on a march, or recruiting. \( \int 27. \)

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In all places where horse or dragoons shall be quartered, the men and their horses shall be billeted in one and the same house (except in case of necessity); and in no case there shall be less than one man billeted, where there shall be one or two horses, nor less than two men where there shall be four horses, and so in proportion. J. 29.

Officers may remove or exchange men or horses, with others quartered in the same town; provided the numbers so exchanged are equal: and the constables, or other officers, shall billet them accordingly. s. 30.

Any justice by his warrant, may command any constable or other officer, to give an account in writing of the number of officers and foldiers billeted by them, and also of the names of the persons on whom they are billeted, with the street or place where they dwell, and the signs, if any; that it may appear where they are quartered, the better to prevent abuses in billeting of them. s. 69.

In Westminster and Southwark, the petty constables shall deliver lists on oath at every quarter sessions, of the houses and persons obliged to receive soldiers quartered, and the number billeted in each house; the lists to remain with the clerk of the peace, to be inspected without see; and the clerk shall deliver copies at 2 d a sheet containing 150 words: constables making default shall forseit 5 l, to the poor by distress, by warrant of one justice; for want of distress, to be imprisoned not more than three months, nor less than one. f. 39.

### VI. To remove in time of elections.

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On notice from the clerk of the crown, to the secretary at war, of any writ made out for the election of a member to serve in parliament, he shall send orders for removing soldiers two miles or more from the place of election, at least one day before the election, and continue at least one day after the poll taken: But this not to extend to Westminster, or other place of residence of the royal family, or fortissed places, or any officer or soldier having a right to vote at such election. 8 G. z. c. 30.

### VII. Having wives or children, to be examined as to their settlement.

If any non commission officer or soldier shall have wife, child, or children; two justices may summon him, where he is quartered, to make oath of the place of his last legal settlement; who shall obey such summons, and make oath accordingly: And the justices shall give an attested copy of such assidavit, to be delived. II.

## Soldiers.

vered to the commanding officer, to be produced when required. And being summoned again, he shall not take another oath with regard to his settlement, but shall leave a copy of the former. 28 G. 2. c. 4. f. 31.

### VIII. Destroying the game.

If any officer or foldier shall, without serve of the lord of the manor under his hand and seal, take or kill any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof on oath of one witness, before one justice; every officer so offending shall forfeit 5.1. to the poor; and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20.5, to be paid and distributed in manner aforesaid. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall sorfeit his commission. I. 49.

### IX. Sued for debt.

No volunteer shall be taken out of the service, by any process, other than for some criminal matter, unless for a real debt, or other just cause of action, and unless affidavit be made before a judge of the court, that the original sum due amounts to 10 l, a memorandum of which oath shall be indorsed on the process; and if he shall be otherwise arrested, the judge may discharge him, and award costs. f. 66.

But the plaintiff, on notice given in writing of the cause of action to such person, or left at his last place of residence before listing, may file a common appearance, in an action to be brought for any debt, so as to intitle him to proceed therein to judgment and outlawry, and to execution, other than against his body. S. 67.

### X. Guilty of crimes.

The king may appoint courts martial, for trial of the offences of foldiers, by the articles of war. 1.55.

And every officer and foldier who shall begin, excite, cause, or join in any mutiny or sedition, or shall not use his utmost endeavours to suppress the same, or shall not give immediate notice thereof to his commanding officer, or shall desert, or shall be found sleeping on his post, or shall leave it before relieved, or shall hold correspondence with the enemy, or strike or use any violence against his superior officer in the execution of his office, or shall disobey his lawful commands, shall suffer death, or such other punishment as a court martial shall instite. (1.

But the trial of offences by a court martial, shall not exempt them from the ordinary process of law. f. 11.

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And if any officer or foldier shall be accused of any capital crime, or of any violence or offence against the person, estate, or property of any the king's subjects, the commanding officer shall use his utmost endeavour to deliver over such accused person to the civil magistrate; and shall also be aiding to the officers of justice, in seizing and apprehending him, in order to bring him to trial; on pain, on conviction before two justices, by the oaths of two witnesses, of being ipso facto cashiered and disabled; provided the conviction be affirmed at the next sessions, and a certificate thereof be transmitted to the judge advocate, who shall certify the same to the next court martial. \( \int \) 60.

But no person acquitted or convicted of capital offences by the civil magistrate, shall be punished for the same by a court martial,

By the 19 G. 2. c. 21. Soldiers convicted of profane cursing or fwearing, and not paying the penalty, shall not be committed to the house of correction as other offenders, but shall be put in the stocks for one hour, for every single offence; and for any number of offences, of which they shall be convicted at one and the same time, two hours.

#### XI. Pay.

The officer who shall receive the pay or subfistence money, shall immediately upon receipt thereof, give publick notice to all perfor keeping inns or other places where foldiers are quartered, to repair to their quarters, at such time as they shall appoint for distribution thereof to the officers and foldiers, which shall be within four days after receipt thereof: And the faid innkeepers and others shall be first paid, before any part of the pay be distributed to the officers or foldiers; provided the accounts exceed not for a commission officer of horse under the degree of a captain, for diet and small beer 2s. a day; nor for a commission officer of dragoons under the degree of a captain 1 s. nor for a commission officer of foot under the degree of a captain 1 s. and for each horse 6d nor for one light horiman's diet and hay and straw for his horse is. nor for one dragoon's diet and hay and straw for his hoffe 1 s. nor for one foot foldier's diet 4 d And if any officer hall not give such notice, and shall not immediately on producing fuch account pay the same, on complaint and oath made thereof by two witnesses at the next sessions, the paymaster (on certificate of the jultices in such sessions of the sum due, and to whom the fame is owing) shall pay the same out of the said officer's arrears, on pain of forfeiting his office, and difability; and if no such arrears be due, the paymaster shall deduct the sums to be paid, purluant to the justices certificate, out of the next pay of the regiment; and such officer shall for such his offence, or for neglecting to give such notice, be ipfo fasto cashiered. And where it shall happen, that the subsistence money due to any officer or soldier, shall by any accident not be paid, or such officer or soldier shall heglect to pay the same; or where any forces shall be upon their march, so that no substituence can be remitted to them, or they Gg 2

# Soldiers.

shall neglect to pay the same; every such officer shall, before his departure out of his quarters, make up the accounts with every person with whom such soldiers shall have quartered, and sign a certificate thereof, and give the same to the party to whom such money is due, with the name of the regiment, troop, or company to which he shall belong, that the same may be transmitted to the paymaster, who shall immediately pay the same, under pain as is before directed for non-payment of quarters. f. 35.

#### XII. Deserting.

The constable may take up any person reasonably suspected to be a deserter, and carry him before a justice in or near the place, who shall examine such suspected person; and if by his consession, or the oath of one witness, or the knowledge of such justice, he shall be found to be a deserter, the justice shall forthwith cause him to be conveyed to the county gaol, or house of correction (or the Savoy in London) and transsmit an account thereof to the secretary at war; and the keeper of such gaol or house of correction shall receive the subsistence of such deserter, for his maintenance while he shall be in custody, but shall not be intitled to any see for his imprisonment. f. 51.

But no officer may break open any house to search for deferters, without a justice's warrant; on pain of 20 l. f. 54.

And the justice, before whom he is brought, shall issue his warrant to the collector of the land tax, of the parish or township where such deserter shall be apprehended, for paying out of the land tax money by him collected or to be collected, to the hands of him who shall apprehend, or cause to be apprehended, such deserter, the sum of 20 s. the same to be allowed on his account.

And if any person shall knowingly harbour or assist any deserter, he shall forfeit 5 l. and if any person shall knowingly buy or exchange or otherwise receive any arms, cloaths, or furniture, belonging to the king, from any soldier of deserter, or change the colour thereof, he shall forfeit 5 l. and on conviction by the oath of one witness, before one justice, the said penalties shall be levied by distress; half the sirst penalty to be to the informer, by whose means such deserter shall be apprehended; and half the last penalty, to the informer; and half of both, to the officer to whom the deserter did belong: and if such person have not sufficient, or shall not pay the penalty in four days, the justice shall commit him to gaol for three months, or cause him to be publickly whipped.

And by the 1 G. ft. 2. c. 47. If any person (other than inlisted foldiers against whom sufficient remedy is already provided) shall persuade any soldier to desert, he shall on conviction in six months forseit 40 l. to the king, or to any other who shall sue for the same in any court at Westminster; and if he shall not have goods worth 40 l. or from the circumstances of the crime it shall be thought proper, the court may award the offender to prison not exceeding six months, and to stand in the pillory one hour.

XIII. Setting

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### XIII. Setting up trades after their discharge.

All officers, mariners, and foldiers who have been employed in his majesty's service, and not deserted, may set up and exercise such trades as they are apt for, in any town or place within Great Britain or Ireland; and if they shall be sued thereupon, they shall have double costs. 22 G. 2. c. 44.

### XIV. Maintenance after their discharge.

By the 43 El. c. 3. Every parish shall be charged with a weekly sum, towards the relief of sick, hurt, and maimed soldiers and mariners, as the justices in sessions shall appoint; so as no parish be rated above 10 d. nor under 2 d. weekly; and so as the total sum in any county where there shall be above 50 parishes, do not exceed 6 d. for every parish.

But as this is left to the discretion of the justices, this is not usually done; but they are left to be provided for by the particular parishes whereunto they do belong, or to the provisions of the royal hospitals of Greenwich or Chelsea respectively.

With regard to the out-pensioners of Chelsea hospital, it is required by the statute of the 28 G. 2. c. 1. that the justices of the peace shall take affidavits of their being alive (or of the time of their deaths respectively) half-yearly, without fee. s. 2.

### XV. Probate of their wills.

The probate of the will, or letters of administration of any common foldier or feaman, who shall be slain or die in the service, shall be exempted from the stamp duties, a certificate being produced from the captain under whom he served at the time of his death, and oath made of the truth thereof, before the proper judge or officer, for which oath no see shall be taken. 5 W. c. 21. f. 6.

Note, there is an act of the 28 G. 2. c. 11. for one year, of somewhat the like import with the annual acts against mutiny and desertion, for the regulation of the marine forces whilst on shore under the direction of the admiralty.

Soap. See Ercife. Spirituous liquozs. See Ercife. Squibs. See Kirewozks. Stabbing. See Homicide.

# Stamps.

Statutes

HE statutes relating to these duties are 5 W. c. 21. 10 An. c. 26. 68 7 W. c. 12. 12 An. A. 1. c. 3. 98 10 W. c. 25. 98 10 W. c. 44. 12 An. A. 2. c. 9. 5 G. c. 19. 1 An. A. 2. c. 22. 6 G. c. 21. 8 An. c. 9. 11 G. c. 8. 16 G. 2. c. 26. 9 An. c. 23. 10 An. c. 19.

Power of the to thefe duties.

2. In one of which flatutes (viz. 10 An. c. 19.) there is a justices in regard clause which brings all the rest within the jurisdiction of the justices of the peace, and almost the whole law relating to this title; and is as follows:

> Two justices of the peace residing near the place, where any pecuniary forfeitures not exceeding twenty pounds on any act touching any the duties under the management of the commissioners of the duties on stamped vellum, parchment, and paper, shall be incurred, or any offence against any of the same acts shall be committed in any wife relating to the same duties, by which any fum of money only may be forfeited, may hear and determine the same; who shall on information or complaint, within a year after seizure made or offence committed, summon the party accufed, and witnesses; and may iffue warrants for levying the penalties by diffress and fale, if not redeemed in fix days. 10 An.

> And the faid justices where they see cause, may mitigate the penalties; the charges being first allowed: and fo as they reduce not the penalty to less than double duty, over and above the faid charges. 1. 173.

And no certiorari shall supersede the proceedings of the said

jultices. J. 174.

And it is generally provided by the feveral acts, that the faid forfeitures shall be distributed, half to the king, and half to him

that shall sue.

Stamps to be feveral and di-Ainct.

3. Before we come to observe what these duties are, it is proper to premise also another clause, in the act of the 95 10 W. c. 25. to wit, that fince the duties on the feveral stamp acts are appropriated to different purposes, therefore to distinguish such paper or parchment which is doubly charged from that which is fingly charged, there shall be two distinct stamps on the doubly charged. And so likewise by the subsequent statutes, where the paper is trebly charged, there shall be three distinct stamps and not one stamp for the whole. So that in this case, a double fix penny stamp, and a twelve penny stamp, are not the fame.

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4. The faid duties, when brought together from the several acts, The several feem to be as followeth; (r) For every tkin and piece of vellum or By By be written any grant, or letters patents under c. 21. 10 W. ft. 2. the great feal, or the feal of the dutchy of c. 25. C. Q. Lancaster, or of any honour Lancaster, or of any honour, dignity, promotion, franchise, liberty or privilege, or exemplifications of the same (commissions of rebellion in process, and charity briefs excepted) shall be paid (2) Grant from the king of any fum above 100 l. which shall pass the great seal, or privy feat (3) Grant of any office above 50 l. a year (4) Pardon of any crime or forfeiture, warrant of reprieve or relaxation from any fine, corporal punishment, or other forfeiture (general circuit or Newgate pardon excepted) (5) Dispensation to hold two livings, or any dispensation or faculty from the archbishop of Canterbury, or master of the faculties -(6) Admittance of a fellow of the college of physicians, or of any attorney, clerk, advocate, proctor, notary, or other officer in any court whatfoever (except annual officers in corporations or inferior courts, whose office is under 10 l. a year, in falaries, fees, or other perquifites) 405. (7) Appeal from the court of admiralty, 405. arches, or the prerogative courts (8) Grant of lands in fee, leafe for years, or other grant or profit (not herein particularly charged) under the great feal, or privy feal, or feal of the exchequer or dutchy of Lancaster (9) Presentation or donation under the great feal, collation, or any prefentation or donation by any patron to any spiritual promotion of 10 l. a year in the king's books — 40s. (10) Letters patents for charity briefs -- 405. (11). General circuit or Newgate pardon-(12) Register, entry, testimonial, certificate of a degree in the universities or inns of court (except the register or entry of a bachelor of arts) (13) Institution, or licence, that shall pass the feal of any bishop, chancellor, or other

ordinary, or any ecclefiaftical court (except licences to schoolmasters and tutors) -

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(14) Letters of mart	5 5.	5 .	5 5.
(15) Exemplification that shall pass the	1 10		
feal of any court	5 3.		11.1
(16) Licence to schoolmasters and tutors— (17) Writ of error, certiorari, or appeal	5	5	4
(except to the delegates)	5 5.	5 5.	
(18) Significavit pro corporis deliberatione-	5 5.	5 5.	
(19) Sentence in the admiral's court, or		Time O	100
cinque ports, or any attachment out of the	fl-sft	daide	
faid courts, or relaxation of the attachment-	5 3.	5 5.	
(20) Probate of a will, or letters of ad-	1	1000	
ministration for any estate above 20 /. value			
(except of common feamen or foldiers flain	36		
or dead in the fervice)	5 5.	5 5.	
(21) Recognizance, statute staple, or sta-		faror	
tute merchant	5 5.	5 5.	
(22) Conveyance, surrender of grants or		Name and the second	
offices, release, or other deed inrolled of re-	n mili	les d'	
cord in any court at Westminster, or any court		o maria	
of record, or by any custos rotulorum, or clerk	Men i	o state	
of the peace	2 2.	5 5.	
(23) Writ of covenant for levying of	30.10	and	
fines Writ of entry for Cuffering a commen	5 5.		
(24) Writ of entry for fuffering a common	Acreb.		
(25) Licence for, or certificate of marriage	5 5.		
(except the certificate of the marriage of a	11 2 .		
feaman's widow)	-		
(26) Writ of babeas corpus	5 3.		
(27) Beneficial warrant or order under the	5 3.		1
king's fign manual (except for the navy, army,	assi, k	man,	
and ordnance)	2161	. 2s.6d.	2161
(28) Record of Nifi Prius or Postea		25.6d.	23,04
(29) Judgment figned by the master of		20.00	
any office, or his deputy or fecondary, or by			- Super
any prothonotary, or his fecondary, deputy,		Tetra i	
or clerk, or other officer in the courts at			
Westminster		2s.6d.	
(30) Commission issuing out of an eccle-			4.
fiaftical court, not otherwise particularly			
charged -	2s.6d	. 25.6d.	
(31) Warrant, monition, or personal de-			
cree in any court of admiralty or the cinque			44,1796
ports —	25.6d	. 2s.6d.	*
(32) Transfer of stock in any company			2 1
(over and above the duty of 2 s. 3 d. by the		tore Tr	11
10 An c. 19. and other duties)	DA TO	CHANGE TO	4s.6d.
(33) Special bail in any court, and ap-	Acres for a		
pearance thereon	· Į s.	I s.	. mitt
7 9		(3	4) Bill,

		19	
	5 W.	98	12 A
1.1 Bill answer replication rejoinder	3	10 W	A -
(34) Bill, answer, replication, rejoinder,	21.		
interrogatories, depositions taken by commis-		c. 25.	c. 9.
fion, or pleadings in any court of equity -	Is.	Is.	•
(35) Admission into any corporation or			
company, matriculation in the univerfities,			
admission into the inns of court		19111 30	
	15.	15.	
(36) Indenture (except for parish appren-			
tices) lease, or deed poll, not otherwise char-			
ged;			
Charter party, policy of affurance, paff-			16 2 2
port, bond, release, contract, or other obli-			CHO.
	10-0		231
gatory instrument, protest, procuration, let-			
te of attorney, or any other notarial act -	6 d.		
Indenture (except for parish apprentices)			
lease or deed poll, not otherwise charged;			
Charter party, policy of affurance, paff-			Jal
port, bond, release, contract, or other ob-			
ligatory instrument, protest, procuration, let-			
ter of attorney, or any other notarial act -		6 d.	
Indenture, leafe, bond, or any deed not		A Total	Sale.
otherwise charged (except bail bonds and af-		10 7	
Comments thought and amount indentions of	SACON N		3 17 23
fignments thereof, and except indentures of			
parish apprentices) ————————————————————————————————————			6 d.
Note; The above treble fix penny inftru-			
ments, being expressed with some confusion,			
because the same words which are in the 5 W		40	
		in the	1000
and 9 & 10 W. are not repeated in the 12 An			
it is thought necessary to infert them as they			
stand in the several acts,			
(Moreover, by the 10 An. c. 26. for a	the Mary		
policy of affurance, if it be within the bills	144		
of mortality, there shall be further paid			
2s. 4d.)			
(37) Decree or difmission in chancery, or			
other court of equity —	. 6 d.	6 d.	
(38) Affidavit (except for burying in wool			· ART
len, and except before officers of the customs			
or justices of the peace, and commissioners for			
levying any aids or duties) — —	- 6d.	6 d.	
(39) Copy of fuch affidavit to be read o	r		
filed in any court	- 6d.	64.	
(40) Original writ (except on which a ca		1013	1 10
			i. This is
pias issues) subpæna, bill of Middlesex, lati			
tat, writ of capias, quo minus, dedimus po	-		
testatem, to take answers, examine witnesses			
or appoint guardians, and any other writ			H3 E 01
process, or mandate issuing out of any cour			.ab. 51
			1835
holding plea, where the debt or damag			
amounts to 40 s. (except writs of covenar	it		11
for levying of fines, writs of entry for com	-		
mon recoveries, and writs of habeas corpus	164	62.	T 4 (34)
The state of the s	,	141	) Entr
		14	1 min

64.

.6d.

Bill,

# Stamps.

(41) Entry of an action in the courts of 5 W.	98 121.
corporations, and other courts, out of which c. 21.	10 W. A. 2.
no writ, process, or mandate issues, holding	c. 25. c. g.
plea, where the debt or damage amounts to	
40s 6d,	6 d.
(42) Common bail in any court, and ap-	Em .
pearance thereon — 6d.	64.
(43) Rule or order in any court at West-	9-641 m
minster — 6d.	6d.
(44) Copy of such rule or order, or of	
any other record or proceedings in the faid	ter man 1
courts, not otherwise charged 6d.	64.
(45) Citation or monition in an ecclefialfi-	
cal court, libel, allegation, deposition, an-	
fwer, fentence, or final decree, inventory,	Period Section
or any copies of them 6d.	64.
(46) Indenture of parish apprentices - 6d.	of Breeze
(47) Declaration, plea, replication, re-	at horself from
joinder, demurrer, or other pleadings in any	austra, visita
court of law id.	1 d.
(48) Copy thereof 1 d.	14.
(49) Depositions in chancery, or other	Tallia (Caralle
court of equity (except the paper draughts of	
depositions taken by commissions before they	
are ingroffed) not before charged; copy of	
any bill, answer, plea, demurrer, replication,	
rejoinder, interrogatories, depositions, er other proceedings in any court of equity — 1 d.	of all ships
(50) Copy of a will 1 d.	14
(Furthermore, besides the duties imposed	14.
by the three acts abovementioned, there are	
other duties by several other acts, as fol-	
lows:)	
(51) For every certificate or debenture for any	deamback of
customs, 8 d. by 9 An. c. 23.	diawoack of
Lunding out by G 11th. C. 24.	

(52) Bill of lading figned for goods to be exported, 4 d. by 9 An. c. 23.

(53) Wine licence, 4 s. by 9 An. c. 23.

(54) Licence for retailing beer, ale, or other excitable liquors,

1 s. by 9 As. c. 23.
(55) Surrender of, or admittance to a copyhold, or any grant or lease by copy of court roll, or any other copy of the court roll of any honour or manor (except the original furrender to the use of a will, and the court roll or book wherein the proceedings of the court are entred), 2s. 3 d. by 10 An. c. 19.

But this shall not charge any copy of a furrender or admittance to a custom right or tenant right estate, not being copyhold.

12 An. A. 1. c. 2. f. 49.

(56) By the 8 An. c. 9. Over and above the stamp duties upon the indenture, there shall be paid by the master, 6 d. for every 20 s. of every fum of 50 l. or under; and the duty of 1 s. for every 20,5 of every fum above 50% which shall be given or contr lexce fums 5. accol

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den paid fon fha contracted for, in relation to any clerk, apprentice, or fervant (except parish apprentices), and proportionably for greater or lesser fums.

5. But none of these acts shall charge any bills of exchange, Writings exempaccounts, bills of parcels, bills of fees, or any bills or notes (not ted from flamps, fealed) for payment of money at fight, or on demand, or at the end of certain days of payment. 5 W. c. 21. f. 5.

Nor any warrant made by, or recognizance taken before ju-

flices of the peace. 6 & 7 W. c. 12. f. 2.

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Nor any warrants or instruments figned by the chief justices in evre, or by any warden, lieutenant, or other officer of the king's forests or chases. 10 An. c. 26. J. 74.

Nor any proceedings of a court martial, which relate to the trial of any common foldier. 6 & 7 W. c. 12. f. 2.

Nor any orders, decrees, or proceedings before commissioners of the fewers. 65 7 W. c. 12, f. 2.

Nor in the court of stannaries.

Likewise persons admitted to sue or defend in forma pauperir shall not be liable to the stamp duties. 5 W. c. 21. f. 14.

6. For the management of the stamp duties, the king may ap- Officers for the point commissioners; who shall substitute inferior officers. 5 W. stamp duties.

c. 21. f. 7. 9 & 10 W. c. 25. f. 48.

And with regard to the duties on the feveral acts before the 8 An. the faid officers, before they shall act, shall take an oath for the due execution of their office, before one or more of the commissioners; and by the said act of the 8 An. and the subsequent acts, they may take the faid oath, with respect to the duties on those acts, before one or more of the commissioners, or a justice of the peace.

7. The commissioners of the treasury shall once a year at least Price of the set the prices of stamped parchment and paper; and the commist- paper to be fioners of the stamp duties shall (besides the stamps abovemen- stamped. tioned) stamp the said price upon every piece of parchment and

paper. 6 & 7 W. c. 12. f. 9.

8. By the several acts, the commissioners shall make an allow- Allowance on ance for prompt payment, to perfons who shall bring parchinent or promp: paypaper to be stamped, or buy the same of them so stamped, the duty ment. whereof shall amount to 10%, or upwards, at any one time.

9. If any person shall write on any paper or parchment, before Penalty for wrie it be duly stamped as by the 5 W. he shall forfeit 51. (And by ting before the 9 5 10 W. 5 l. more.) And an officer offending, shall over stamped. and above for feit his office. And an attorney offending shall be

disabled to practise. 5 W. c. 21. J. 11.

And if any instrument shall be written by any person (not being a known clerk or officer in respect of his office intitled to write the same) on paper or parchment not duly stamped, there shall be paid over and above the duty the fum of 51. (and by the 10 & 11 W. 51. more); and the instrument shall not be given in evidence in any court, until both the duty and the faid fum shall be paid, and a receipt produced for the same, under the hand of some officer appointed to receive the duties, and until the same shall be stamped. 5 W. c. 21. f. 11.

And

Stamps.

And by the 9 An. c. 23. If any officer of the customs shall fign any debenture not stamped, or if any other person shall write any debenture, bill of lading, or licence by that act charged with the Ramp duties, or fign such bill of lading; he shall forfeit 10%. with costs: and an officer of the customs offending shall moreover forfeit his office. And there shall be paid for the same, over and above the duties, 5 1 to the king; and the instrument shall not be available till that be done.

And by the 10 An. c. 19. If any the matters required to be stamped by that act, shall be ingrossed on paper not stamped, there shall be paid for the same (over and above the duties) 51. in like

manner.

M. 13 G. K. and Reeks. Upon a trial at bar, on an information in nature of a quo warranto for the office of burgels of Chrift Church, the admission of the defendant was produced, and it appeared to be a parchment that had only one stamp, and yet had five admissions entred upon it. And in order to make it good, they had annexed four other parchments, each of which was flamped. And the court held, that would not make it good; and that the proper way would have been, to have paid the four penalties, and to have had four new stamps on the first parchment. And for want of this there was a verdict against this and the other four defendants. Str. 716.

famp duties.

10. And to prevent frauds, if any clerk or other officer shall tring infruments neglect to enter or file any action, plaint, bail, appearance, adcharged with the miffion, or other thing in respect whereof any duty is payable, for four months; or shall not file the same before any subsequent proceeding shall be entred; or shall file any such subsequent proceeding before the other shall have been filed as aforesaid; he shall Except where judgment is entred by confession. forfeit 201. 1 An. ft. 2. c. 22. f. 1.

Writing to be ear the stamp.

11. And the writing shall be either upon, or as near as conveniently may be to the stamp; on pain of tol, with full costs,

1 An. ft. 2. c. 22. f. 5.

The fame stamp ot to ferve

12. If any person shall write any thing, in respect whereof the stamp duties are payable, on any piece of paper or parchment, whereon there shall have been before any writing in respect whereof any duty was payable, before the same hath been again stamped; or shall erase or scrape out any name, sum, date, or other thing, or fraudulently take off any tlamp, with intent to use it in any other thing in respect whereof any duty is payable; he shall forfeit in like manner as for writing on paper unstamped, and also 201. with full costs. I An. ft. 2. c. 22. f. 2, 3.

Counterfeiting the framps.

13. By the feveral acts, if any person shall counterfeit the stamps, or cause or procure them to be counterfeited, or knowingly fell any paper with fuch counterfeit stamp; he shall be guilty of felony without benefit of clergy.

Stamp duty on almanacks.

14. For every sheet almanack, for one year or less, printed on one fide only, shall be paid 1 d. by the 9 Az. c. 23. For every other almanack for one year, 2 d. id.

And if for more than one year, then 2 d. a year. id.

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But this shall not charge any almanack for more than if it were made for three years only. 9 An. c. 23. f. 53.

And all books and pamphlets, ferving chiefly to the purpose of an almanack, shall be charged as almanacks. 10 An. c. 19.

But where an almanack contains more than one sheet, one sheet only need to be stamped. 9 An. c. 23. f. 26.

And if any person shall expose to sale any almanack unstamped,

he shall forfeit 10 1. with costs. 9 An. c. 23. f. 27.

15. For every journal, mercury, or other publick news parouty on news per, shall be paid 1 d. a sheet, and  $\frac{1}{2}d$ . for every half sheet, papers and papers 11 G. c. 8.

For every pamphlet contained in half a sheet of paper, 1 d.

10 An. c. 19. J. 101.

Pamphlet larger than half a sheet, not exceeding a whole sheet,

for every printed copy thereof, 1 d. id.

Pamphlet above one sheet, and not exceeding 6 sheets in octave or a lesser page, or not exceeding 12 sheets in quarto, or 20 sheets in folio, for every sheet which shall be contained in one printed copy thereof, 2 s. id.

But news papers printed on a sheet and an half of paper, shall not pay as pamphlets only 3 s. for each impression. 11 G. c. 8.

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(But nothing herein shall charge any act of parliament, proclamation, order of council, form of prayer, or other act of state, printed votes, school books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. 10 An. c. 19.

And if any person shall write, print, or expose to sale any such pamphlet or news paper (the said pamphlet exceeding one sheet only excepted) before the paper shall be stamped; he shall forfeit

101. with full costs. 10 An. c. 19. f. 105.

And a printed copy of every pamphlet containing more than one sheet, shall (within the bills of mortality) in 6 days after printing be brought to the head office, and the title, number of sheets, and duty shall be entred in a book, and the duty thereupon paid to the receiver general, who shall give a receipt for the same on such printed copy, or the same shall be stamped to denote the payment: Without the bills, it shall be brought in 14 days to some head collector of the stamp duties, who shall enter the title, number of sheets, and duty, which duty shall be thereupon paid to the collector, who shall give a receipt for the same on such printed copy. 10 An. c. 19. f. 1111.

And if any such pamphlet containing more than one sheet, shall be printed or published, and the duty not paid, and title registred, and one copy stamped where required so to be, within the times above limited; the author, printer, and publisher, and all other persons concerned, shall lose all property therein, and in every copy thereof, and shall also forfeit 201. with full costs. id. 112.

And no person shall expose to sale any such pamphlet, without the name and place of abode of some known person, by or for

whon

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But

whom it was printed or published, written or printed thereon; on pain of 201. id. f. 113.

And pamphlets unfold shall be cancelled by the commissioners, and the like number of other sheets stamped gratis shall be changed

for them. id. f. 114.

And two justices may hear and determine offences in relation to pamphlets or news papers on this act, in like manner as above is mentioned; and mitigate the penalty, so as they do not reduce it lower than one fourth part, over and above the costs; and where goods of the offender cannot be found, may commit him to priion till paid. J. 120.

And by the 16 G. 2. c. 26. If any person shall fell, or expose to fale, any news paper, or any book, pamphlet, or paper, deemed to be a news paper, unstamped; any justice of the peace may commit him (being convicted before him, by confession, or oath of one witness) to the house of correction for any time not exceeding 3 months: And any person may apprehend and carry him before such justice: And on producing a certificate of such convic. tion, under the hand of fuch justice (which he shall give without fee), he shall have a reward of 20s. to be paid by the receiver general of the stamp duties. f. 5.

16. For every advertisement in the gazette, or other printed paper, published weekly or oftner, shall be paid 1 s.

c. 19. f. 101.

And the faid duty on advertisements shall be paid, within 30. days after the printing or publication, to the receiver general or his deputy, within the bills; and elsewhere to the next adjacent head officer: on pain of treble duty with full costs. f. 118.

But this shall not extend to any single advertisement printed by

Duty on cards ad dice.

Duty on advertifements in

news papers.

17. Last of all, it is thought proper to insert here the regulations concerning the duties on cards and dice; they being likewife under the management of the commissioners of the stamp duties; and not of small confideration, since a man may be guilty of offences with respect thereunto, for which he shall lose his life.

(1) By the to An. c. 19. No playing cards or dice shall be im-

ported. J. 167.

(2) For every pack of cards made in Great Britain, shall be paid 6 d. 9 An. c. 23.

And for every pair of dice 51. id.

(3) And all pieces of ivory, bone, or other matter, made or on, to denote any chance, shall be deemed dice. 10 An. c. 19. J. 168.

(4) All makers of cards or dice, before they begin to make them, shall give notice in writing of the Nouse or place where they intend to make them, to the commissioners of the stamp duties, of their officer next adjacent, on pain of 501. 9 An. c. 23. f. 41. And also all the cards, dice, materials, and utenfils shall be for-10 An. c. 19. J. 166.

(5) And the officers may enter any house or place, where cards or dice are made, fold, or exposed to fale, or suspected to be pri-

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vately made, or into any publick gaming house, room, or place, and there search and see what quantity of cards or dice shall be making, and whether they be stamped; and if the owner or occupier shall refuse entrance or liberty of search, he shall forfeit to l. 10 An. c. 19. J. 169.

(6) And if the commissioners be informed, or have cause to suspect, that any person makes cards or dice in a place not entred, on affidavit thereof by the informer before a justice of the peace declaring the grounds of his suspicion; the officer may in the day time, and in the presence of a constable, by warrant of such justice break open the door, or any part of such private place, and enter, and seize all such cards, dice, tools, or materials; and if not replevied in 5 days, they shall be forseited and sold. 6 G. 21. f. 59.

(7) And no materials begun to be wrought for cards or dice, shall be removed until they be compleatly made, or the duties paid; on pain of double duty. 10 An. c. 19. f. 166.

(8) And no maker of cards or dice shall remove the same from the place of making, until such mark upon the dice, and such seal upon the paper and thread inclosing every pack of cards shall be put thereon, as the commissioners shall appoint; on pain of for-seiting the same, and treble value. 9 An. c. 23. f. 41.

(9) And every maker of cards and dice, who shall endeavour to defraud the king by any concealment, shall forfeit 201. 9 An.

(10) The makers of cards and dice shall once in every 28 days make entry upon oath with the proper officer, of all the cards and dice by them made within the said time; on pain of 20 l. 9 Am. c. 23. f. 42.

And the card maker shall be obliged at the respective times of entring, to give bond with surety of treble the duty, for payment of the duty in 6 weeks. 6 G. c. 21. f. 57.

(11) And the maker of cards and dice shall once in every 6 weeks clear off the duties; on pain of double duty. 9 An. c. 23.

And if the card maker shall on entry pay down the duty, he shall have the like allowance as for present payment of the stamp duties by the 1 An. st. 2. c. 22. (That is, he shall have an abatement after the rate of 6 l. per cent. per annum for 6 months.) 6 G. c. 21. f. 58.

(12) And no cards or dice shall be exposed to sale, or used in play in any publick gaming house, unless the paper and thread inclosing the same shall have been respectively sealed and stamped, and unless one of the cards of each pack shall be also stamped on the spotted side; on pain that every person who shall expose to sale any such cards or dice not stamped, shall forfeit for every such pack, and for every one of such dice; 5 l. with costs. 10 An. c. 19. f. 162.

(13) And by the 6 G. c. 21. if any person shall take off the stamp of playing cards (in order to put it on a new pack), of square or new spot any dice which have been played with, or shall inclose any pack of cards in an outside paper which hath been

# Stock of companies.

used before, or shall sell any cards not stamped and inclosed in paper and thread sealed and stamped; he shall forfeit 10 l. with sull costs. s. 5.55.

(14) And if any person shall counterfeit the stamps on cards or dice, or knowingly sell them with a counterfeit stamp; he shall be guilty of selony without benefit of clergy. 10 An. c. 19. s. 163.

(15) Nevertheless, it shall be lawful to remove cards or dice from the place where they are made, without stamping or paying duty, provided that within a month after they are made, and before they be removed, bond of double the duty be given, that they shall be exported and not relanded. 10 An. c. 19. f. 170. 5 G. c. 19. f. 48.

Start. See Bent.
Starth. See Excise.
Stock of the county. See County rate.

# Stocks.

T is faid, that every vill, of common right, is bound to provide a pair of flocks. 2 Haw. 73.

And the constable, by the common law, may confine offenders in the stocks, by way of security, but not by way of punishment.

But by divers statutes, the stocks is also appointed for the punishment of offenders in fundry cases, after conviction.

# Stock of companies.

F any person shall forge or counterfeit any power or authority to transfer any share of any capital stock of any company established by act of parliament, or to receive the same, or shall forge or counterfeit the name of any proprietor, or person intitled to a dividend, or shall fraudulently demand, or endeavour to have any such share received by virtue of such counterfeit instrument, or shall personate any proprietor of any such share of such stock; he shall be guilty of felony without benefit of clergy. 8 G. c. 22. f. 1.

Stolen goods. See Search warrant, Re-

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### Stores.

F any person having the charge or custody of any of the Imbezilling to king's armour, ordnance, ammunition, shot, powder, or the value of 20 %. habiliments of war, or of any victuals provided for victualling the army, shall for lucre or gain, wittingly, advisedly, and of purpose, to hinder his majesty's service, imbezil, purloin, or convey away the same to the value of 20 s. or shall feloniously steal or imbezil any of his majesty's fails, cordage, or any other of his majesty's naval stores, to the like value of 20s. he shall (on profecution within a year) be adjudged guilty of felony without benefit of clergy. 31 El. c. 4. 22 C. 2. c. 5.

2. And any of the principal officers or commissioners of the Under the value navy, may iffue warrants to fearch for the same, and punish the of 20s. offenders by fine not exceeding 201. or imprisonment not exceeding one week, the value of the goods not exceeding 20 s. and if the offence requires a higher punishment, may commit him till he find fureties to appear in the exchequer, or other court where the king shall question him for the same, within one year, on process

duly served for that purpose on such offender. 1 G. ft. 2. c. 25.

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3. And every person who shall counterfeit the hand of any Counterfeiting a officer of the navy to any paper whereby his majesty's naval trea- naval officer's fure may be disposed of, or knowingly produce the same, he may hand. be bound over by the faid officers and commissioners, or any of them, until he find furety to appear at the next affizes or quarter sessions, to be there proceeded against according to law. 1 G.

A. 2. c. 25. J. 6. 4. No person, other than persons authorized by contracting Making stores with his majesty's officers, shall make any stores of war or naval with the king's flores with the king's mark, that is, cordage of 3 inches and up-mark. wards with a white thread laid the contrary way, or any smaller cordage with a twine in lieu of white thread laid the contrary way, or any canvass with a blue streak in the middle, or any other ttores with the broad arrow; on pain of forfeiting the same, and 200 /. with costs (on conviction at the assizes or sessions, 17 G. 2. 6.40. f. 10, 11.) half to the king, and half to the informer.

98 10 W. c. 41. And such person in whose custody such goods or stores so marked or any timber, thick stuff, or plank, marked with the broad arrow, 9 G. c. 8. f. 3.) shall be found, shall forfeit the same and 2001. with costs in like manner, and be imprisoned till paid, unless he shall upon trial produce a certificate from three principal officers of the navy, expressing the quantity, and on what occasion

he came by them. 9 & 10 W. c. 41. But the judge or justices may mitigate the penalty as they shall fee cause, and may commit the offender to gaol till payment, or may punish him corporally by causing him to be publickly whip-Vel. II. HA ped, Pardon.

## Surety for the peace.

ped, or committed to some publick workhouse to be kept to hard labour for 6 mouths or a less time. 9.6. c. 8. f. 4.

5. Imbezilling or purloining of armour, stores, naval provifions, and other habiliments of war, are excepted out of the general pardon of the 20 G. 2. c. 52.

Subognation. See Perjury. Sunday. See Logd's day.

## Surety for the peace.

OUT of the Latin word pax, the Normans formed their paix, and we (out of that) out peace. Lamb. 5.

Surety for the peace is the acknowledging a recognizance, or bond, to the king, taken by a competent judge of record, for the

keeping the peace. Dalt. c. 116.

And this surety of the peace, every justice of the peace may take and command, by a two fold authority: 1. As a minister, commanded thereto by a higher authority: as when a writ of supplicavit, directed out of the chancery or king's bench, is delivered to him. 2. As a judge, and by virtue of his office, derived from his commission. Dalt. c. 116.

Concerning which I will shew,

I. For what cause surety of the peace shall be granted.

II. At whose request it shall be granted.

III. Against whom it shall be granted.

IV. In what manner it shall be granted.

V. How the peace warrant may be superseded.

VI. How the peace warrant shall be executed.

VII. What ought to be the form of a recognizance for the peace.

VIII. How such recognizance shall be certified.

IX. How such recognizance may be forfeited.

X. How the recognizance being forfeited shall be proceeded on.

XI. How such recognizance may be discharged.

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#### 1. For what cause surety of the peace shall be granted.

1. By the commission of the peace, one or more justices have power to cause to come before them, all those who to any of the king's people concerning their bodies, or the siring of their bouses, have used threats, to find sufficient security for the peace or their good behaviour towards the king and his people; and if they shall resust to find such security, to cause them in the king's prisons to be safely

kept, until they Shall find Such fecurity.

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2. Upon which Mr. Hawkins observes, that it seemeth clear, that wherever a person has just cause to sear, that another will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief, he may be demand the surety of the peace against such person, and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath, that he is actually under such fear, and that he has just cause to be so, by reason of the other's having threatned to beat him, or lain in wait for that purpose; and that he doth not require it out of malice, or for vexation.

1 Haw. 127.

3. Also it seems the better opinion, that he who is threatned to be imprisoned by another, has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection, that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt, but that one threatned to be beaten, may demand the surety of the

peace. 1 Haw. 127.

4. But if the justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. As in common experience we find it, that where a person shall upon a just cause come and crave the peace against another, and hath it granted to him; when such other person shall come before the justice, he likewise will crave the peace against the former, and will perhaps surmise some cause; but yet will nevertheless be content to surcease his fuit and demand, so as the other will relinquish to have the peace against him: Here the justice shall do well not to be too forward in granting the peace thus required by the latter, but to persuade him, and to shew him the danger of his oath which he is to take; but yet if he will not be persuaded, but will take his oath, that he is in fear, where indeed he neither doth fear, nor hath cause to fear, this oath shall discharge the justice, and the fault shall remain on fuch complainant. Dalt. c. 116.

5. Also, if a man will require the peace, because he is at wa-

Dalt. c. 116.

6. Also, Mr. Lambard says, he takes it to be somewhat clear, that a justice may not by the commission award a precept of the H h 2 peace,

## Surety for the peace.

peace, in behalf of a man that will require it, because he feareth that he will do harm to his ferwants or cattle. Lamb. 83.

And Mr. Dalton fays, where a man is in fear that another will hurt his fervants, or his cattle, or other goods, this furety of the peace shall not be granted by the justice. But in this case Fitz. berbert saith, the party may have a special writ out of the chancery directed to the sheriff, that he shall cause such person to find surety, that he shall do no hurt or damage to the other man in his body, or to his servants or goods; and if he will not find surety, that then he shall arrest and detain him in prison until he shall find surety. Dalt. c. 116.

And the reason why a man may not have sureties of the peace against another, for that he feareth he will do harm to his servants, seemeth to be, because it should be the servant's fear in such case, and not the master's; and the servant's own oath before the justice is necessary. And as to his goods, it seemeth clear, that no sureties of the peace ought to be granted in that case; for the recognizance of the peace when taken, is only that the party shall keep the peace towards the king and all his liege people.

But Mr. Dalton fays, that if a man shall threaten to hurt his wife, or child, he thinks he may crave the peace at the justice's hands, by the words of the commission, and that the justice ought to grant it. Dalt. c. 116.

7. Note also, the surety of the peace shall not be granted, but where there is a fear of some present or suture danger, and not merely for a battery or trespass that is past, or for any breach of the peace that is past; for this surety of the peace is only for the security of such as are in fear: But the party wronged may punish the offender by indistment; and the justice, if he see cause, may bind over the affrayer. Dalt. c. 116. That is, he may bind him over to answer unto the indistment.

#### II. At whose request it shall be granted.

1. As to this, Mr. Hawkins fays, It feems to be agreed at this doy, that all persons whatsoever, under the king's protection, being of sane memory, whether they be natural and good subjects, or aliens, or excommunicate, or attainted of treason, have a right to demand surety of the peace. And it is certain, a wife may demand it against her husband threatning to beat her outrageously, and that a husband also may have it against his wife. I Haw. 126.

Upon which Master Crompton observeth, that if the wise in such case cannot find furcties, she shall be committed; and so, says he, a man may be rid of a shrew. Crom. 118.

2. And Mr. Dalton says, an infant under the age of 14 years, may demand this surety, and it shall be granted him. Dalt.

2. But as to a person of non sane memory, Mr. Dalton says, this surety shall neither be granted against him nor to him upon his own request; but yet if there shall be cause, the justice ought to provide for his safety. Dalt. c. 117.

III. Against

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#### III. Against whom it shall be granted.

There feems to be no doubt, but that it ought, upon a just cause of complaint, to be granted by any justice of the peace, against any person whatsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age, or under age. But infants and semes covert ought to find security by their friends, and not to be bound themselves. And the safest way of proceeding against a peer, is by complaint to the court of chancery or king's bench. I Haw. 127.

#### IV. In what manner it shall be granted.

1. It feemeth certain, that if the person to be bound be in the presence of the justice, he may be immediately committed, unless he offer sureties; and from hence it follows a fortiori, that he may be commanded by word of mouth to find sureties, and committed for his disobedience: But it is said, that if he be absent, he cannot be committed without a warrant from some justice in order to find sureties, and that such warrant ought to be under seal, and to shew the cause for which it is granted, and at whose suit (that the party may provide his sureties), and that it may be directed to any indifferent person. I Havo. 128.

2. The justice may make the warrant, to bring the party before himself or some other justice, or he may make it to bring the party before himself only; for he that maketh the warrant for the most part hath the best knowledge of the matter, and therefore he is the fittest to do justice in the case.

he is the fittest to do justice in the case. 5 Co. 59.

3. As to the granting process of the peace or good behaviour, out of the chancery or king's bench, it is enacted by the 21 J. c. 8. that it shall not be granted but upon motion in open court, and declaration in writing and upon oath, to be exhibited by the party desiring such process, of the causes for which such process shall be granted; the motion and declaration to be mentioned on the back of the writ. And if it shall afterwards appear, that the causes are untrue, the court may order costs to the party grieved, and commit the offender till paid.

#### V. How the peace warrant may be superseded.

1. It is faid, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after a warrant is issued against him, he may have a supersedens from such justice, which shall discharge him from arrest from any other justice, at the suit of the same party, for whose security he has given such surety. 1 Haw. 129.

2. In which fupersedeas it is not necessary to name either the sureties, or the sums in which they are bound; but yet it is the

better form to express them both. Dalt. c. 118.

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### Surety for the peace.

3. Also, it is said, that an appearance upon a recognizance for the peace may be superseded, by finding sureties in the chancery or king's bench, and purchasing a writ testifying the same; but this practice having been often abused, it is enacted by the 21 J. c. 8. that no writs of supersedeas shall be granted out of the chancery or king's bench, but upon motion in open court, and on such sufficient sureties as shall appear on oath to the court, to be affessed in the subsidy book at 5 l. lands, or 10 l. goods, and unless it shall also first appear to the court, that the process of the peace or good behaviour is prosecuted against him, desiring such supersedeas bona side by some party grieved in that court, out of which the supersedeas is desired to be awarded. I Haw. 129.

#### VI. How the peace warrant shall be executed.

1. It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may either by parol, or by precept in writing, authorize an officer sworn and known, to serve it, but cannot impower any other person without a precept in writing. 1 Hazv. 128.

2. It feems generally agreed, that where a person authorized by warrant of a justice of the peace to compel a man, who is sheltred in an house, to find sureties for the peace or good behaviour, is denied quietly to enter into it, he may justify breaking open the doors, in order to take him; but he must first signify to those in the house the cause of his coming, and request them to give him admittance. 2 Haw. 86.

3. If the warrant specially direct that the party shall be brought before the justice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice of such place, the officer has the election to bring him before what justice he pleaseth, and may carry him to prison for resusing to find surety before such justice. 1 Harv. 128.

4. And if the party is carried before another justice, and not before him who issued the warrant, such other justice must take the surety, and bind him by recognizance in all points as the form of the precept doth require. And thereupon such other justice, having so taken surety of the peace, may and ought upon request, to make his superfedeas to all officers, and to all other justices of the same county; and thereby the said party shall be discharged from sinding other surety, and from any other arrest for the same cause. But by such supersedeas, the other justice cannot discharge the warrant of the sirst justice, until the party be bound indeed, nor give any other day to the party to appear. Dalt. c. 118.

5. If the warrant be in the common form, requiring the officer to cause the party complained of to come before the justice to find sufficient surety, and if he shall resuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, the officer who serves it, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant; but upon resusal to do either, that is, either to go be-

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fore the justice, or to find fureties, he may carry him to the gaol by force of the same warrant, without more. 1 Haw. 128. Dalt. c. 118.

And yet the conflable, or officer, may bring him in that case before the justice; and if he refuses there to give sureties, he may commit him without any further warrant or mittimus. 2 H. H. 112.

Nevertheless, notwithstanding these great authorities, it may not be convenient for the justice, to leave so much to the constable's judgment, as to determine what shall or shall not be deemed a refusal to find such sureties; for that the constable is constituted a judge in fuch case by no law. And much less doth it seem advisable, to require in the warrant, as is usual, that the constable shall carry the party to gaol, if he shall refuse to find sufficient fureties; for it doth not appear, how the constable can any way be deemed a competent judge of that; for it is certain, that he cannot administer an oath to such sureties, or others, whereby to inform himfelf of fuch fufficiency.

6. If the officer do arrest the party, and do not carry him before the justice to find sureties; or upon the refusal of the party, if the officer shall arrest him, and do not carry him to the gaol, in both these cases the officer is punishable by the justices for this neglect, by indictment and fine at their fessions: And also the party arrested may have his action of false imprisonment for the arrest; for where the officer doth not pursue the effect of his warrant, his warrant will not excuse him of that which he hath done. Dalt. c. 118.

7. When the party cometh before the justice, he must offer furcties, or else the justice may commit him; for the justice needeth not to demand surety of him. Dalt. c. 118, 169.

8. If the justice was deceived in the sufficiency of the sureties, he or any other justice may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognizance for the same. Dalt. c. 116, 119.

9. But if the fureties die, the party principal shall not be compelled to find new fureties. Dalt. c. 119. Because their execu-

tors or administrators are liable.

10. Also if a man, that was bound to keep the peace, hath broken his bond, the justices ought of discretion to bind him anew. Lamb. 78.

But not until he be thereof convicted by due course of law; for before conviction, he standeth indifferent, whether he hath forfeited his recognizance or not. Crom. 125.

#### VII. What ought to be the form of a recognizance for the peace.

1. The recognizance which the justice takes for the keeping of the peace, is rather of congruity, than by any express authority given either by the common law, or by statute. Dalt. c. 168.

2. If it is taken in pursuance of a writ of supplicavit, it must be wholly governed by the directions of fuch writ: But if it be H h 4 taken

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## Surety for the peace.

taken before a justice, upon a complaint below, it seems that it may be regulated by the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time for which the party shall be bound. And it hath been said, that a recognizance to keep the peace as to any person, for a year, or for life, or without expressing any certain time (in which case it shall be intended for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the king's people in general, is good. 1 Haw. 129.

3. However it feems to be the fafest way, to bind the party to appear at the next sessions of the peace, and in the mean time to keep the peace as to the king and all his liege people, especially as to the party, according to the common form of precedents.

1 Haw. 129.

#### VIII. How such recognizance shall be certified.

If it be taken by force of a writ of *supplicavit*, it needs not be certified till the justice receive a writ of *certiorari* to that purpose. But if it be taken upon a complaint below, it must be certified, sent, or brought to the next sessions, by force of the statute of the 3 H. 7. c. 1. that the party so bound may be called. I Haw. 130.

#### IX. How such recognizance may be forfeited.

1. There are divers things which may be done against the peace, and divers offences for which an indictment against the peace will lie; and yet the committing or doing fuch offence or act shall be no forfeiture of the recognizance for the peace: for that the act that shall cause a forfeiture of such recognizance must be done or intended unto the person as is aforesaid, or in terror of the people. Therefore to enter into lands, where he ought to bring his action; or to disseile another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's person, and without publick terror; or to do a trespass in another man's corn or grass; or to take away another man's goods wrongfully, so it be not from his perfon; or to steal another man's horse, or other goods feloniously, being not from his person: All these, and the like, are breaches of the peace, and yet these will make no breach of this recognizance, nor breach of the peace within the meaning of the

2. More particularly; The recognizance is forfeited, if the party make default of appearance, and the fame default shall be

recorded. 3 H. 7. c. 1.

However, if the party have any excuse for his not appearing, it seems that the sessions is not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. I Haw. 130.

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And Mr. Dalton fays, in case of the sickness of the party, so that he cannot appear, he has known that the justices upon due proof thereof have forborn to certify or record such forseiture or default; and that they have taken sureties for the peace of some friends of his present in court, until the next sessions; for that the principal intent of the recognizance was but the preservation of the peace. But he queries how this is warrantable by their oath. Dalt. c. 120.

3. Also, there is no doubt, but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others thro' his procurement; as man-slaughter, rape, robbery, unlawful imprisonment, and the like.

1 Haw. 130.

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4. Also it hath been holden, that it may be forseited by any treason against the king's person, and also by any unlawful assembly in terror of the people, and even by words directly tending to a breach of the peace, as by challenging one to sight, or in his presence threatning to beat him. I Haw. 130.

Otherwise it is if the party be absent; and yet if the party so bound shall threaten to kill or beat a person who is absent, and after shall lie in wait for him to kill or beat him, this is a sorfei-

ture of the recognizance. Dalt. c. 121.

5. However, it feems that it shall not be forseited by bare words of heat and choler, as the calling a man knave, teller of lies, rascal, or drunkard; for the such words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther: And it hath been said, that even a recognizance for the good behaviour shall not be forseited for such words; from whence it follows a fortiori, that a recogni-

zance for the peace shall not. 1 Haw. 130.

6. Also, there are some actual assaults on the person of another, which do not amount to a forfeiture of fuch recognizance; as if an officer, having a warrant against one who will not fusfer himself to be arrested, beat or wound him in the attempt to take him; or if a parent in a reasonable manner chastise his child; or a master his servant, being actually in his service at the time; or a schoolmaster his scholar; or a gaoler his prisoner; or even a hulband his wife, as fome fay; or if one confine a friend who is mad, and bind and beat him, in such a manner as is proper in his circumstances; or if a man force a sword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person; or if a man beat another (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to disposses him of his land or goods, or the goods of another delivered to him to be kept, and will not defift upon his laying his hands gently on him, and disturbing him; or if a man beat, or as some say, wound, or maim one who makes an affault upon his person, or that of his wife, parent, child, or maiter, especially if it appear that he did all he could to avoid aghting before he gave the wound; or if a man fight with, or

## Surety for the peace.

beat one who attempts to kill any stranger; or if a man even threaten to kill one, who puts him in fear of death, in such a place where he cannot fafely fly from him; or if one imprison those whom he sees fighting, till the heat is over. I Haw. 130, 131.

#### X. How the recognizance being forfeited shall be proceeded on.

It is faid, that the justices cannot in any case proceed against the party, for a forfeiture of his recognizance, either in respect of his not appearing, or breaking the peace; but that the recognizance it felf, with the record of default of appearance, ought to be removed into some of the courts at Westminster, who shall proceed by scire facias upon such recognizance: And so it ought to be, if it be presented by the jury, or great inquest, that the party hath forfeited his recognizance, by breach of the peace. 1 Haw. 130. Dalt. Old Ed. c. 70.

#### XI. How such recognizance may be discharged.

1. He who is bound to the peace, and to appear at a certain day, must appear at that day, and record his appearance, altho' he who craved the peace cometh not to defire that it may be continued; otherwise the recognizance cannot be discharged. Dalt.

2. If the recognizance be made to keep the peace generally, without any time or day limited, it shall be construed to be during the party's life; and this the justice may do upon reasonable cause: but if fuch furety be so taken, during the offender's life, neither the king, nor the justice, nor the party, can release or discharge it: And therefore the justice must be well advised, how he granteth such surety. Dalt. c. 119, 120.

3. But it feems to be agreed, that it may be discharged by the death or demise of the king in whose reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. 1 Haw. 129.

4. Also, it hath been holden, that it may be discharged by the release of the party at whose complaint it was taken, being certified together with it; but this may justly be questioned, because the recognizance is not to the subject but to the king; and confequently cannot be discharged by the subject, who is not a party to it: however, fuch a release will be a good inducement to the court, to which such a recognizance shall be certified, to discharge it. 1 Haw. 129.

5. And if a man be bound to keep the peace towards the king and ail his people, but not towards any person certain, and to appear at fuch a fessions, the court at that fessions may make proclamation, that if any man can shew cause, why the peace granted against fuch a one shall be continued, he shall speak; and if no perion cometh to demand the peace against him, or to shew cause why it should be continued, then the court may discharge him.

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But if a man be bound as aforesaid, and especially to keep the peace towards a certain person, there tho' such person cometh not to desire the peace may be continued, yet the court by their discretion may bind him over till the next session, and that may be to keep the peace against that person only if they shall think good; for it may be that the person who sirst craved the peace is sick, or otherwise letted, so as he cannot come to that sessions to demand the continuance of the peace further. Dalt. c. 120.

6. Also it is certain, that such a recognizance cannot be pardoned or released by the king, before it is broken; because the subject hath a kind of interest in it; but being forfeited, then the king, and no other, may release and pardon the forfeiture. I Haw. 129.

7. And it is faid, that the fureties are not discharged by their death; but that their executors or administrators (as hath been faid) do continue bound. I Haw. 129. Dalt. c. 120.

8. Likewise, if the party be imprisoned for default of sureties, and after, he that demanded the peace against him happen to die; it seemeth the justice may make his liberate or warrant for the delivery of such prisoner, for after such death, there seemeth no cause to continue the other in prison. Also, any justice may, upon the offer of such prisoner, take surety of him for the peace, and may thereupon deliver him. Dalt. c. 118.

## Surety for the good behaviour.

A MAN may be compelled to find fureties, both for the good behaviour, and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour, is therein also bound to the peace. Palt. c. 122.

This furety for the good behaviour being of near affinity to furety for the peace, both as to the manner in which it is to be taken, superfeded, and discharged, it seemeth not to require a particular consideration, save only as to these two points;

- I. For what misbehaviour it is to be required.
- II For what it (hall be forfeited.
  - I. For what misbehaviour it is to be required.
- 1. It doth not appear, that the confervators of the peace at common law had any power as touching the good behaviour, further than as it had a relation to the peace; and not as it is contradillinguished from it. And it seemeth, that the power which the justices of the peace do exercise at this day, in relation thereunto, doth solely depend upon the commission of the peace, and the statute of the 34 Ed. 3. c. 1. (Except in some special instances wherein the power of binding to the good behaviour is given to them by particular statutes, which pertain not to this general title.)

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2. The words in the commission are these: We have assigned you, jointly and severally, and every one of you, our justices to keep our peace—and to cause to come before you, or any of you, all those who to any one or more of our people, concerning their bodies, or the siring their bouses, have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall result to find such security, then them in our prisons, until they shall

find such security, to cause to be Safely kept.

3. The statute of the 34 Ed. 3. c. 1. as to this matter runs thus: In every county shall be assigned for the keeping of the peace, one lord, and with him three or four of the most worthy in the county, with some learned in the law; and they shall have power to restrain the offenders, rioters, and all other barators, and to purfue, arrest, take, and chastife them according to their trespass or offence; and to cause them to be imprisoned and duly punished, according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the fea, and be now come again, and go wandring, and will not labour as they were wont in times past; and to take and arrest all those that they may find by indictment, or by fuspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient furety and mainprize of their good behaviour towards the king and bis people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endamaged, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor put in the peril which may bappen of such offenders

4. This statute seems to have had in view chiefly the disorders to which the country was then liable, from great numbers of disbanded soldiers, who having served abroad in the wars of that victorious king, were grown strangers to industry, and were ra-

ther inclined to live upon rapine and spoil. Barl. 524.

5. But whatever the natural and obvious sense of it may be, when compared with the history and circumstances of those times, it is certain that it hath been carried much farther by construction, and the purport of it hath been extended by degrees, until at length there is scarcely any other statute, which hath received such a largeness of interpretation.

And that I may proceed with clearness in a matter so essential to the office of a justice of the peace, I will set down the several expositions which have been given of this statute from time to time, by learned men; and then raise such observations thereupon,

as the fubject will naturally fuggest.

6. The first unsolding of the sense of this statute which hath occurred, was in the case of Sir Richard Crostes and Sir Richard Corbet, in the second year of the reign of king Hen. 7. wherein it was resolved by all the judges for that purpose assembled, that he who is bound to the good behaviour, ought not to do any thing which shall be cause of breach of the peace, or to put the people in sear, dread, or trouble; and so shall be intended of all things

which which a breathe pe behavior and by not the faid, fault.

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which concern the peace: But not in missions of other things, which touch not the peace. Yet a diversity was observed, between a breach of the peace, and a breach of the good behaviour; for the peace is not broken without an affray or battery, but the good behaviour may be forseited by the number of people a man has, and by their harness, or weapons, and the like, altho' they break

not the peace. 2 H. 7. 2.

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7. The second instance, and upon which much stress hath been laid, was in the 13th year of the same king. In trespass of assault, battery, and imprisonment, at D. the desendant saith, that one Alice B. had a house in the same town, and kept there sufficious people, to wit, of common bawdry, and that the plaintiff oftentimes resorted to the same house suspiciously, with women of bad same and name, whereby the constable of the same town required the desendant to aid him to arrest the plaintiff, to find surety of his good behaviour: whereby the desendant came with the said constable at the hour of 12 in the night, and him found suspiciously in the same place; whereupon he took him, and put him in ward: And it was holden by all the justices to be a good justification; for they said, that it is lawful for every constable to take suspected persons, which wake in the night, and sleep in the day, or that keep suspicious company. 13 H. 7. 10.

8. In the next place, Sir Anthony Fitzherbert, who lived in the reign of K. Hen. 8. faith, that it feemeth that one justice may, by the commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may; and the words of the statute of the 34 Ed, 3. are to the same effect: Otherwise, he says, damage may happen to some of the king's subjects, if the party be not attached, before that two justices have made the precept; yet (he says) the common usage is, to make such precept of the good behaviour in the name of two justices, and it is good to observe this direction.

Fitzb. 7. Crom. 122.

9. In the next place, it is proper to take notice of a case adjudged in the court of king's bench, in the 30th of Q. Eliz. reported by L. Coke, 4 Inft. 181. which was thus: At a fessions at Bridgewater, in the county of Somerfet, one William King with fureties was bound by recognizance to appear at the next general sessions of the peace in the same county, and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next fessions, William King appeared, and was indicted for flanderous words spoken since his binding, to wit, for faying at one time to Edward Kyrton, esquire, Thou art a pelter, thou art a lyar, and haft told my lord lyes. And he was further indicted, that fince the faid recognizance, the close of one John Wich with force and arms he broke and entred, and the cattle of the said John depasturing in the said close unlawfully wexed and chased. And afterwards at another time he said to the said Kyrton, thou art a drunken knave. Which indictment was removed into the king's bench. And hereupon it was debated divers times both at the bar and the bench, whether admitting all that is contained in the indistment to be true, any thing therein was in judgment

of law a breach of the faid recognizance. And it was refolved, that neither any of the words, nor the trespass, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for tho' the faid words thou art a lyar, thou art a drunken knave, are provocations, yet they tend not immediately to the breach of the peace; as if William King had challenged Kyrton to fight with him, or had threatned to beat or wound him, or the like; these tend immediately to the breach of the peace, and therefore are breaches of the recognizance of the good behaviour. And this diversity (Lord Coke fays) was justly collected upon the coherence and context of the statute of the 34 Ed. 3. whereby justices are assigned for keeping of the peace, and to restrain the offenders, rioters, and all other barators, and to chastise them according to their trespass and offence; and to inquire of pillors and robbers in the parts beyond the feas, and be now come again, and go wandring and will not labour: And thus much for the punishment of offences against the peace after they be Then followeth an express authority given to the justices, for prevention of fuch offences before they be done, namely, and to take of all them that be not of good fame (that is, that be defamed and justly suspected that they intend to break the peace) subere they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people (which must concern the king's peace, as is also provided by the words subsequent to the intent that the people be not by fuch rioters troubled or endamaged, nor the peace blemished, nor merchants nor other passing by the bighways disturbed, nor put in the peril that may happen of such offenders. And as for the trespass; altho' every wrongful trespass is by force and arms, and against the peace, yet these are not taken to be fuch as shall make a breach of the good behaviour.

10. After this, Mr. Lambard, who wrote towards the beginning of the reign of K. James 1. faith thus: Surety of the good abearing is of great affinity with that of the peace; as being provided for preservation of the peace, as that other is; for in the commission of the peace, they are both conveyed under one tract of speech, against such as threaten to hurt mens bodies, or fire their houses: which things (he says) are now commonly prevented

by furety of the peace only.

And in the 2 H. 7. 2. (above recited) the furety of the good abearing is set forth to rest in this point chiefly, that a man do nothing that may be cause of a breach of the peace; and that it doth not confift in the observation of things that concern not the peace; and that it should differ from surety of the peace in this, that where the peace is not broken without an affray, or battery, or fuch like, this furety may be broken by the number of a man's company, or by his or their weapons or harnefs.

And herewithal (he fays) do also agree certain precedents in the

king's bench.

But all this notwithstanding, he thinks that a man may reasonably affirm, that the furety of good abearing should not be restrained to so narrow bounds.

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In proof of which, he proceeds to comment on the abovementioned statute of the 34 Ed. 3. enabling the keepers of the peace to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good abearing, towards the king and his people : So that if a man be defamed, he may by virtue hereof, be bound to his good behaviour at the discretion of the justices. Now the doubt resteth in this; to understand concerning what matters this defamation must be: and this (he thinks) may be partly gathered out of the faid statute; for after it hath first given power to the wardens of the peace to arrest and chastife offenders (that is to fay, against the peace, rioters, and barators) then it willeth them to inquire of such as having been robbers beyond the fea, were come over hither, and would not labour. as they were wont; and lastly, it authorizeth them, to take furety of the good behaviour of such as be defamed, namely, for any of those former offences; for so it standeth well together that they shall both punish such as have already so offended, and shall also provide, that others shall not likewise offend.

But he fays, the further this bond of the good abearing doth extend, the more regard there ought to be taken in the awarding of it; and therefore (fays he) altho' the justices have power to grant it, either by their own discretion or upon the complaint of others, even as they may that of the peace, yet I wish rather, that they do not command it but only upon sufficient cause seen to themselves, or upon the complaint of other very honest and

credible persons.

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And then, being about to set forth the form of a warrant, and of a recognizance for the good behaviour, he says,—And here, forasmuch as one justice alone, and out of sessions, may both by the first clause of the commission, and also by the opinion of Fitz-berbert, grant this surety of the good abearing (altho' the common practice be, that two such justices do join in that doing, whereof also Fitzberbert hath very good liking) I will not stick to set forth the common forms as well of the precept as of the recognizance for the same, wherein if I shall use the names of two justices, you must take that to be done according to the common sashion, and not of any necessity in law. For as I would more gladly use the assistance of a fellow justice in this behalf, if I may conveniently have it; so if that may not be gotten, I would not greatly fear, when good cause shall require, to undertake the thing my self alone.

And besides this, he says, you may see admitted by the opinion of the court, 13 H. 7. that if a man in the night season, haunt a house that is suspected for bawdry, or use suspections company, then may the constable arrest him to find surety for his good abearing; for bawdry is not merely a spiritual offence, but mixed, and

founding somewhat against the peace of the land.

And therefore (fays he) it shall not be amis at this day, in my slender opinion, to grant furety of the good abearing, against him that is suspected to have begotten a bastard child, to the end that he may be forthcoming when it shall be born; for otherwise there will be no putative father found, when the justices shall

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after the birth come to take order for his punishment. Lamb. 115. -119.

11. In the next place, Mr. Pulton, who lived about the fame time with Lambard, writeth thus; The furety of the good abearing is ordained for the prefervation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may fooner slide into the peril and danger of it. The furery of good abearing is most commonly granted in open fessions, or by two or three justices; or, upon a supplicavit, and great cause shewed and proved, it is granted in the chancery or king's bench. And tho' one justice alone may grant it if he will, yet it is feldom done so, unless it be to prevent some great, sudden, and imminent enormity or danger. The furety of the peace is most times taken at the request of one for the preservation of the peace chiefly against one. But the furety of the good abearing is oftentimes granted at the fuit of divers, and those must be men of credit, and to provide for the fafety of many; for the effect and purport thereof is, that the party bound shall demean himself well in his port, behaviour, and company, and do nothing that may be the cause of breach of the peace, or in putting the people in fear or trouble: And it is chiefly granted against common barrators, common rioters, common quarrellors, common peace breakers, and perfons greatly defamed for reforting to houses suspected to maintain incontinency or adultery, and against those that be generally feared to be robbers or spoilers of the king's people, or which do endamage, disturb, trouble, or put in peril passengers by the way. Pult. 18.

12. Afterwards Mr. Dalton, who wrote towards the latter end of King James the first his reign, says, The surety of the good behaviour is of great affinity with that of the peace, and is provided chiefly for the prefervation of the peace; and that it is most commonly granted either in the open sessions, or by two or three justices out of fessions. Yet by the words of the commisfion, as also by the common opinion of the learned, one justice alone, out of fessions, may grant this surety of the good behaviour. But this is not usual, unless it be to prevent some great and sudden danger; especially against a man that is of any good estate, carriage or report. And it shall be good discretion in the justices, that they do not grant it, but either upon sufficient cause feen to themselves, or upon the suit and complaint of others, and the same very honest and credible persons. Dalt. c. 123.

13. In the next place, Mr. Hawkins, who wrote in the reign of K. George the first, saith thus: There seem to have been some opinions, that the flatute, speaking of those that be not of good fame, means only such as are defamed, and justly suspected, that they intend to break the peace, and that it doth not any way extend to those who are guilty of other misbehaviours not relating to the peace. But this feems much too narrow a construction; fince the abovementioned expression of persons of evil fame, in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome

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behaviour give just suspection of their readiness to break the peace; and accordingly it seems always to have been the better opinion, that a man may be bound to his good behaviour for many causes of scandal, which give him a bad same, as being contrary to good manners only; as for haunting bawdy houses with women of bad same; or for keeping bad women in his own house; or for speaking words of contempt of an inferior magistrate, as a justice of the peace, or mayor, tho' he be not then in the actual execution of his office; or of an inferior officer of justice, as a constable, and such like, being in the actual execution of his office.

However it feems the better opinion, that no one ought to be bound to the good behaviour, for any rash, quarressome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalize the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems, that he who barely calls another rogue, or rascal, or teller of lies, or drunkard, ought not for such cause to be bound to the good behavior.

However, says he, I cannot find any certain precise rules, for the direction of the magistrate in this respect; and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarressome, or scandalous; as of those who sleep in the day, and go abroad in the night; and of such as keep suspectious company; and of such as are generally suspected to be robbers, and the like; and of eves droppers; and common drunkards; and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil same, who, being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with convenient certainty. 1 Haw. 132.

14. And thus the sense of the statute hath been extended, not only to offences immediately relating to the peace, but to divers misbehaviours not directly tending to a breach of the peace; insomuch as it is become difficult to define how far it shall extend, and where it shall stop.

Mr. Dalton, in order to determine the same with some kind of certainty, hath (notwithstanding his opinion as abovementioned) inserted a number of instances, wherein sureties of the good behaviour may be granted; and they are these that follow:

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(2) Barators.
(3) Common quarrellors, and common breakers of the peace.

(4) Such as lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault, or attempt to rob another, or shall put passengers in fear or peril; or shall be generally suspected to be robbers by the highway.

(5) Such as are like to commit murder, homicide, or other

grievances, to any of the king's subjects in their bodies.

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(6) Such as shall practife to poison another: one instance of which may be the poisoning their food; thus Mr. Dalton granted the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it amongst his neighbour's fowls, whereby most of them died.

(7) Such as in the presence or hearing of the justice, shall missehave himself in some outrageous manner of force or fraud.

(8) Such as are greatly defamed for reforting to houses suspected to maintain adultery, or incontinency.

(9) Maintainers of houses commonly suspected to be houses of common bawdry.

(10) Common whoremongers and common whores; for bawdry is an offence temporal as well as spiritual, and is against the peace of the land.

(11) Night walkers, that shall eves-drop mens houses, or shall cast mens gates, carts, or the like, into ponds, or commit other outrages and misdemeanors in the night, or shall be suspected to be pilserers, or otherwise like to disturb the peace, or that be persons of ill behaviour, or of evil same or report generally, or that shall keep company with any such, or with any other suspectious person in the night.

(12) Suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; unless upon examination they shall give a good account of such their living.

(13) Common gamesters, especially if they have not whereon to live.

(14) Such as raise hue and cry without cause.

(15) Libellers.

(16) Putative father of a bastard child.

(17) Such as persuade or procure the putative father to run away, or the mother to be conveyed away, whereby she leaveth

her child to the charge of the town.

(18) Such as abuse a justice's warrant, or shall abuse him of the constable in executing their office. Nay, it seemeth (he says) that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, tho' it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour.

(19) Such as charge another before a justice with felony, riot, or forcible entry, and yet will not profecute or give evidence.

(20) In general, whatsoever act or thing is of it self a missehaviour, is cause sufficient to bind such an offender to the good behaviour. Dalt. c. 124.

To which others have added other instances: As,

(21) Forcible entry. 1 Haw. 124.

(22) Mr. Hawkins fays, that he hath heard it agreed in the court of king's bench, that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any prosecution at common law; yet it feems, he says, that the author may be bound to his good behaviour, as a scandalous person of evil same. I Haw. 195.

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(23) A man did beat a woman in Westminsterball, and he was bound to the good behaviour; and so (says Mr. Crompton) he may be bound to the peace or good behaviour, where he striketh a person in the presence of the justices in sessions. Crom. 124.

(24) A man was bound to the good behaviour by the court of king's bench, for affaulting and threatning a person so, that he could not attend the court in a suit there, without great cost. And so it seemeth that it may be done, where one cometh to the sessions about a traverse to be tried there, or to prefer a bill of indictment, if he be assaulted or threatned. Crom. 125.

15. I have omitted to make any remarks in the progress of these authorities, being willing to exhibit them together in one view; I proceed now to take notice of such observations as do

occur upon the whole.

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First, It appears from hence, that the universal practice of one justice binding to the good behaviour, is but of a modern date; altho' the law for it is the same now, that it was near 400 years ago: and that it was a long time doubted, whether one juffice alone could require sureties of the good behaviour. But here a diffinction ought to be made, between the power given by the commission of the peace, and the power given by the abovementioned statute: As to the commission, there seemeth to be no foundation for any doubt, but that thereby one justice alone may require such sureties; for the words are express, we have affigned you, jointly and severally, and every one of you; but then that extends only to two instances, namely, to the threatning of a person concerning his body, or the firing of his house. As to the statute, the doubt feems to have arisen upon this; in that having appointed who shall be assigned for justices, it then directeth, that They shall bave power to restrain offenders; and it is holden, as Mr. Lambard hath observed, that if no power be expresly given by any statute to any one justice alone, he cannot otherwise compel the observation thereof, than by the help of his fellow justices. Hawkins speaking hereof in the case of riots, says, that if one justice alone, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass. and that the party arrested may justify the rescuing of himself; because no one single justice is by this statute made a judge of the faid offence: Yet nevertheless, he says, by a favourable construction which this statute hath received for the advancement of justice, it hath been resolved, that any one justice, upon this statute, if he finds the persons riotously assembled, may, without flaying for his companions, arrest the offenders, and bind them to their good behaviour.

Secondly, It feemeth from what hath been rehearfed, that the words, not of good fame, were generally understood for a long time, to refer to such offences only, as have a relation to the peace,

and not to other things which concern not the peace.

Thirdly, That one great in let to the larger, and at length slmost unlimited interpretation of the words, was the case above-mentioned 13 H.7. wherein it was adjudged to be lawful to arrest a man for the good behaviour, for frequenting a suspected bawdy

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house, with women of bad fame. And this is the reason which Mr. Dalton gives for many of his inftances above specified, namely, that they are more properly against the peace, than this same case

of avowtry.

Fourthly, That when once the gap was opened for the admiffion of other offences not immediately relating to the peace, they flowed in and multiplied. Thus, in the case of bastardy, having some affinity with the other of frequenting bawdy houses, Mr. Lambard thought, that with equal reason, the reputed father of a bastard child might be bound to the good behaviour; and in a few years after, Mr. Dalton delivers it absolutely, that he may be so bound.

Fifthly, That therefore the natural and received fense of any Ratute ought not to be departed from without extreme necessity; for that one concession will make way for another, and the latter

will plead for the same right of admission as the former.

Sixthly, That notwithstanding the aforefaid instances given by Mr. Dalton and others, it may not be fafe in all cases to rely upon every one of them without distinction; not only because it is almost impossible for any two cases to be exactly alike in all their circumstances, but also because in fact divers of them at different times have been adjudged otherwise, and others of them have not prevailed without much difficulty and contradiction in the courts above, and perhaps were at length admitted rather from the conveniency and reasonableness of the thing itself, and from an indulgence usually allowed to those gentlemen who serve their country without gain, and oftentimes with much trouble, than from any clear, politive, and express power given to them by the commission, or by the faid statute.

Seventhly, That notwithstanding all which hath been said, perhaps the case before recited, concerning the frequenting of a sufpected bawdy house, will not wholly support the weight which so many authors have laid upon it. For the question, whether a justice of the peace had cognizance of the offence, by virtue of the commission of the peace, or of the statute of the 34 Ed. 3. was no part of the dispute; for it was an arrest by the constable ex officio, as a conservator of the peace at common law, and without any warrant from a magistrate: And the question was not, whether the constable might require fureties for the good behaviour, as a thing different from fureties for the peace, but whether

in that case he could arrest at all or not.

And if the authority of this case shall be abated, several of the

abovementioned instances will abate in proportion.

Eighthly, It is to be observed, that others of the abovesaid instances, were established upon matters originally determined in the court of king's bench, and Mr. Crompton himself doth refer to the authority and practice of that court in feveral instances. Crom 120. But it doth by no means follow from what the justices of the court of king's bench may do, that justices of the peace may do the like; for their authority is circumscribed and limited by their commission and the statute law.

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Ninthly, That it will perhaps abate some other of the foregoing inflances, if we attend to this confideration; that there is a great difference between what the juffices in fessions may do, after conviction by a jury, for an offence committed, and what a fingle justice out of the fessions may do, before an offence is committed. and to prevent the fame from being committed; or what a fingle justice may no, upon a fummary conviction before him, for an offence, as directed by some special act of parliament. The truth is, binding to the good behaviour was a discretionary judgment at the common law, given by a court of record, for an offence at the fuit of the king, after a common law conviction by verdict of Trial by his peers is the Englishman's birthright by the great charter, and cannot be taken away but by an authority equal to that which established it, that is, by act of parliament; and therefore where an act gives a fummary conviction before a justice of the peace, and inflicts a punishment upon such conviction, such statute must be pursued both as to the conviction and punishment. And it seemeth incongruous, that a justice of the peace shall have power to bind a man to the good behaviour, for an offence which he himself hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not, and cannot legally appear to him, that the perfon is guilty.

Tenthly, That therefore upon the whole it may be proper to conclude, that the magistrate in this article of the good behaviour, cannot exercise too much caution and good advisement; that in matters which the law bath left indefinite, it is better to fall short of, than to exceed his commission and authority; that to bind a man to the good behaviour upon the statute for evil fame in general, may not always be with fafety; not only because upon an action brought it may be hard to prove such evil fame, but also because in fact it is not always true, for many a good man hath been evil spoken of: That altho' in some cases, a justice of the peace may have a discretionary power (as Mr. Hazukins expresseth it), yet he must remember withal, that it is a legal discretion, as Mr. Barlow terms it, in which in favour of liberty great tendernets is to be used; or, as Lord Coke hath defined it, discretion is a knowledge or understanding to discern between truth and falshood, between right and wrong, between shadows and substance, between equity and colourable gloffes and pretences, and not to do according to our wills and private affections; and fuch discretion ought to be limited and bounded with the rules of reason, law, and justice. 5 Co. 100. 10 Co. 140.

#### II. For what it shall be forfeited.

1. This hath been handled in part as it fell in with the former fection: And agreeably to the doctrine there laid down, Mr. Dalton fays, that he who is bound to the good behaviour ought to demean himself well in his carriage and in his company, not doing any thing which shall be a cause of breach of the peace, or to put the people in fear, dread, or trouble; and so shall be intended of

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## Surety for the good behaviour.

all things which concern the peace, but not in misdoing of other

things which touch not the pence. Dalt. c. 122.

2. And Mr. Hawkins faith, It hath been laid down as a general rule, that whatever will be a good cause to bind a man to his good behaviour, will forseit a recognizance for it; but this hath fince been denied, and indeed seems by no means to be maintainable, because the statute in ordering persons of evil fame to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the publick from that danger which may probably be apprehended from their suture behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forseit their recognizance, who yet may justly be compellable to give one, as those who keep supicious company, or those who spend much money idly, without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, and the like.

1 Haw. 132, 133.

3. However it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited; as for going armed with great numbers, to the terror of the people, or speaking words tending to sedition; and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may

never actually happen. 1 Haw. 133.

Warrant for the peace, or good behaviour, in the king's majesty's name.

Westmorland. EORGE the second, by the grace of god, of Great Britain, France, and Ireland, king, defender of the faith, and so forth: To our sheriff of the county of Westmorland, to the constable of the hundred of \_\_\_\_\_ in the said county, to the petty constables of the town of \_\_\_\_\_ in the said county, and to all and singular our bailiffs and other ministers in the said county, as well within liberties as without, greeting.

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Sir

George Dalston, to find sufficient surety and mainprise, as well for his personal appearance at the next general quarter sessions of our peace, to be holden at Appleby, or elsewhere, in and for the said county, as also for our peace in the mean time to be kept towards us and all our liege people, and chiefly towards the said A. I. that is to say, that he the said A. O. shall not do, nor by any means procure or cause to be done, any of the said evils, to any of our said people, and especially to the said A. I. [Or, if for the good behaviour, as also for his good behaviour in the mean time, towards us and all our liege people, and especially towards him the said A. I.] Witness the said Sir George Dalston at Smardale in the said county, the day of in the in the said county, the

If the justice shall think sit that he shall be carried immediately to gaol, for default of sureties, without being brought before him, or any other justice, this clause may be inserted, viz. — and especially towards him the said A. I. And if he the said A. O. shall resuse so to do, that then immediately, without expecting any surther warrant, you him safely convey, or cause to be sufely conveyed, to our common gaol in the said county (or, to the house of correction at — in the said county), there to remain until he shall willingly do the same: So that he may be before our said justices at the said next general quarter sessions of our peace, then and there to answer unto us for his contempt in this behalf. And see that you certify your doings in the premisses, to our said justices at the said sessions, bringing then thither this precept with you.

Warrant for the peace, or good behaviour, in the name of the justice himself.

Westmorland. SIR William Fleming, baronet, one of the justices of our lord the king assigned to keep the peace within the said county, To the sheriff of the said county, to the bigh constable of —— in the said county, to the petty constables of —— in the said county, and to all other the ministers and officers of our said lord the king, within the said county, and to every of them, greeting.

Ferasmuch as A. I. of —— in the said county, yeoman, bath personally come before me, and bath taken a corporal oath, that he the said A I. is askaid that A O. of —— in the said county, yeoman, will beat him (wound, maim, kill, or do to him some bodily hurt) and bath therefore prayed surety of the peace against him the said A. O. [Or, if for the good behaviour, That A. O. of —— in the said county, yeoman, bath threatned to do some bodily hurt to him the said A. I. or, to hurn the house of him the said A. I. and bath therefore prayed surety of the good behaviour against him the said A. O.] These are therefore on the behalf, and in the name of our said lord the king, to command you jointly and severally, that immediately upon the receipt her of you bring the said A. O. before me, to find surety as well for his personal appearance at the next general quarter sessions of the peace to be holden at Kirkby in Kendale in and for the said county, as also for his keeping the peace [Or,

Surety.

Or the warrant may be directed to any of these officers abovenamed, particularly; or to any other indifferent person or persons, as followeth:

Another warrant for the peace, or good behaviour.

Westmorland. { To the constables of the town of \_\_\_\_\_ in the said county, and to either of them.

ORASMUCH as A. I. the wife of B. I. of your faid town, labourer, bath required sureties of the peace [or, of the good behaviour before me Daniel Wilson, esquire, one of the justices of our lord the king assigned to keep the peace within the Said county, against A.O. of your said town, butcher, and withal bath taken her corporal oath before me, that she requireth the same not for any private malice, batred, or evil will, but simply that she is afraid that he the faid A. O. will do to her some bodily mischief [or as the case shall be: And if it is for the good behaviour, then add, - and that be the faid A. O. bath threatned to do some bodily mischief to her the said A. I. or to burn her bouses] These are therefore in the name of our Said lord the king to charge and com. mand you, that immediately upon fight bereof, you or one of you do bring the said A. O. before me to find sufficient sureties, as well for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, as also that he the Taid A. O. Shall in the mean time keep the peace [Or, be of the good behaviour] as well towards our faid lord the king, as towards all his liege people, and especially towards the said A. I. Dated at Dallam Tower in the faid county, the \_\_\_\_ day of \_ in the \_\_\_\_ year of the reign of our said lord George the second, of Great Britain, France, and Ireland, king, defender of the faith, and so forth.

Another warrant for the peace, or good behaviour.

Westmorland. { To the constable of \_\_\_\_\_ in the faid county.

FOR ASMUCH as A. I. of—aforefaid in the county of orefaid, yeoman, bath perfonally come before me Thomas Shepherd, elquire, one of the justices of our lord the king assigned to keep the peace within the said county, and bath taken his corporal oath, that A. O. of—aforefaid in the county as foresaid, yeoman, bath assaulted, beaten, and wounded him the said A. I. and farther hath threatned him concerning his body, insomuch that he the said A. I. is a fraid that the said A. O. will heat, wound, maim, or kill him the said A. I. or do to him some other body harm; and thereugon

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thereupon be the faid A. I. hath prayed security of the peace, [or, of the good behaviour] to be had or granted to him against the said A. O. These are therefore to require you in the name of our said lord the king, immediately upon the sight hereof to bring the said A. O. before me, to find sufficient sureties for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, then and there to answer the premisses, and in the mean time that he the said A. O. keep the peace, [or, shall be of the good behaviour,] towards our said lord the king, and all his liege people, and especially towards the said A. I. Given under my hand and seal at Kirk by in Kendale in the said county, the day of in the second, of Great Britain, France, and Ireland, king.

Note; The warrants above set forth, so far as they concern the good behaviour, are framed upon the clause in the commission, impowering one justice to bind to the good behaviour certain offenders therein mentioned. The following warrant for the good behaviour simply, as contradistinguished from the peace, is formed on the statute of the 34 Ed. 3. so often abovementioned.

Warrant for the good behaviour, on the 34 Ed. 3. c. 1. from Lambard and Dalton.

Westmorland. W Illiams Winder, esquire, and Richard Honeywood, esquire, justices of our lord the king, assigned to keep the peace within the said county, To the speriff of the said county, to the constable of the hundred of—in the said county, to the petty constables of the town of—in the said county, and to all and singular bailists, constables, and other officers of our said lord the king, as well within liberties as without, in the same county, greeting.

Forasmuch as we are given to understand, by the information, testimony, and complaint of many credible persons, that A.O. of - in the county aforefaid, gentleman, and B. O. of the same, yeoman, are not of good name and fame, nor of honest conversation, but evil doers, rioters, barrators, and disturbers of the peace of our faid lord the king, so that murder, bomicide, strifes, discords, and other grievances and damages among ft the lieges of our faid lord the king concerning their bodies are likely to arise thereby; Therefore on the behalf of our said lord the king, we command you, and every of you, that you omit not by reason of any liberty within the county oforesaid, but that you attach, or one of you do attach the aforesaid A.O. and B.O. fo that you have them before us or others our fellows, justices of our said land the king affigued to keep the peace within the county aforesaid, as soon as they can be taken [or, before the justices of our faid lord the king, assigned to keep the peace within the county aforesaid, and also to bear and determine divers felonies, tresposses, and other misdemeanors in the said county committed, at the next general quarter sessions of the peace to be bolden in and for the said county to find then before us (or the said justices) Sufficient

### Surety.

fufficient surety and mainprise for their good behaviour towards our said lord the king, and all his people, according to the form of the statute in such case made and provided. And this you shall in no wise omit, on the peril that shall ensue thereon. And have you before us, or before the said justices [at the sessions aforesaid] this precept. Given under our seals at Duston in the county aforesaid, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of our said lord \_\_\_\_.

#### Recognizance for the peace or good behaviour.

Acknowledged before me

Thomas Carleton.

The condition of this recognizance is such, that if the within bounden [or, above bounden] A.O. shall personally appear at the next general quarter sessions of the peace to be holden in and for the county aforesaid, to do and receive what shall then and there be injoined him by the court, and in the mean time shall keep the peace, [or, be of the good behaviour, or, shall keep the peace and be of the good behaviour] towards the king and all his liege people, and especially towards A.I. of \_\_\_\_\_\_ in the said county, yeoman; Then the said recognizance shall be woid, or else remain in its force.

#### Mittimus for want of fureties.

Westmorland. { To the constable of \_\_\_\_\_ and to the keeper of \_\_\_\_ in the said bounty.

HEREAS A.O. of —— in the said county, yeoman, is now brought before me John Dalston, esquire, one of the justices of our lord the king assigned to keep the peace in and for the said county, requiring him to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, and in the mean time to keep the peace [or, be of the good behaviour] towards our said lord the king, and all his liege people, and especially towards A. I. of —— in the said county, yeoman; and whereas

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#### The form of a supersedeas.

Westmorland. R OGER Wilson, esquire, one of the justices of our lord the king, assigned to keep the peace within the county aforesaid, To the sheriff, bailiff, constables, and other the faithful ministers and subjects of our said lord the king within the said county, and to every of them, greeting.

Forasmuch as A. O. of - in the said county, yeoman, hath personally come before me at Casterton in the said county, and hath found sufficient surety, that is to say, A. S. of - yeoman. yeoman, either of the which hath undertaken for the said A. O. under the pain of 201. and he the said A. O. hath undertaken for himself under the pain of 401. that he the Said A.O. shall personally appear at the next general quarter selsions of the peace to be holden in and for the faid county, then and there to do and receive what shall be injoined him by the faid court, and in the mean time shall well and truly keep the peace [or, be of the good behaviour towards our faid lord the king, and all his liege people, and especially towards A. I. of - yeoman; Therefore on the behalf of our faid lord the king I do command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means for the said cause to molest the faid A. O. and if you have, for the faid occasion, and for none other, taken or imprisoned him the said A. O. that then him you deliver. or cause to be delivered and set at liberty, without further delay. Given at Casterton aforesaid, in the county aforesaid, under my in the - day of --year of the reign

This fupersedeas may be also in the name of the king, under the teste of the justice, thus;

EORGE the fecond by the grace of god &c. To the sheriff &c. greeting: Forasnuch as A.O. hath come before Edward Wilson, esquire, one of our justices assigned to keep the peace within our said county, and hath found &c. We therefore command you, and every of you, that ye forbear &c. Witness the said Edward Wilson

### Surety.

Wilson at Dallam Tower in the county aforesaid, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of our reign.

Release of the surety for the peace, or good behaviour.

Westmorland. B E tt remembred, that on the \_\_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of \_\_\_\_\_ the aforesaid A. I. bath come before me the said Fletcher Fleming, esquire, and freely remised and released, as much as in him lieth, the aforesaid security of the peace [or, of the good behavior] by him prayed before me against the abovenamed A. O. In witness whereof, I the said Fletcher Fleming have hereunto set my seal. Given &c.

This is to be written under the recognizance; and if the justice only fign, without fealing it, it is well enough, especially where the recognizance is without seal.

Or, the release may be by it felf, thus:

Westmorland. B E it remembred, that A. I. of \_\_\_\_\_\_ in the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of \_\_\_\_\_ came before me William Tatham, esquire, one of the justices of our lord the king, assigned to keep the peace within the said county, at Askham in the said county, and there remised and freely released to A. O. of \_\_\_\_\_ in the said county, yeoman, the surety of the peace [or, good behaviour] by him the said A. I. before me prayed against the said A. O. Given &c.

Or, if it is before another justice, then say, the surety of the peace [or, good behaviour] which he has against A. O. of in the said county, yeoman. Given &c.

But note, that none of these releases will discharge the recognizance, or the appearance of the party bound thereby; but that he must appear according to the condition of the recognizance, for the safeguard of his recognizance.

Liberate to discharge one committed for want of fureties.

Wellmorland. Tanwix Nevinson, esquire, one of the justices of our lord the king, assigned to keep the peace in the county aforesaid, To the keeper of his majesty's gaol at in the said county, greeting.

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peace [or, being of the good behaviour] in the mean time, towards our said lord the king, and all his liege people, and especially towards the faid A. I. bath found before me sufficient sureties, to wit, A. S. of - yeoman, and B. S. of - yeoman, either of which bath undertaken for the said A. O. under the pain of 201. and he the said A. O. hath undertaken for bimself under the pain of 40 l. that he the faid A. O. shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace [or, be of the good behaviour in the mean time, towards our faid lord the king, and all his liege people, and especially towards the said A. I. Therefore on the behalf of our faid lord the king I do command you, that if the faid A. O. do remain in the faid gaol, for the faid cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and fuffer him to go at large, and that, upon the pain that will fall thereon. Given under my feal, at Newby Hall in the faid county, the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of our said lord George the second, of Great Britain, France, and Ireland, king.

> Surgeons. See Phylicians. Suspicion. See Arrest, Warrant. Swans. See Game.

### Swearing.

t. By the canons of the church, If any offend their brethren Punishment in by swearing, the churchwardens shall present them; and the spiritual court. fuch notorious offenders shall not be admitted to the holy communion, till they be reformed. Can. 109.

And by the statute of the 19 G. z. c. 21. It is enacted as follows:

2. If any person shall profanely curse or swear, and be thereof Pecuniary peconvicted on confession, or oath of one witness, before one justice nalty. (or mayor), he shall forfeit as follows: That is to say,

Every day labourer, common soldier or common seaman, 1 s.

Every other person, under the degree of a gentleman, 2 s.

And every person of or above the degree of a gentleman, 5 s.

And for a second offence after conviction, double; and for every other offence after a second conviction, treble. f. 1.

Which faid penalties shall go to the poor of the parish where

the offence was committed. f. 10.

3. If such person shall curse or swear in the presence and Swearing in prehearing of a justice (or mayor); he shall convict him without sence of a justice, other proof. f. 2.

4. If in the presence and hearing of a constable, if he is un- In presence of a known to such constable, the said constable shall seize and carry constable.

1:

### Swearing.

him forthwith before the next justice (or mayor of a town corporate), who shall convict him upon the oath of such constable;

If he is known to such constable, he shall speedily make information before some justice (or mayor) in order that he may be convicted. f. 3.

In prefence of any other.

5. So that the constable, if it is in his hearing, is required to profecute; but any other person also may profecute, if he pleases.

Commitment on not paying the penalty. 6. And such justice (or mayor) shall immediately on such information on the oath of any constable, or of any other person, cause the offender to appear before him; and on proof of such information, convict him: and if he shall not immediately pay down the penalty, or give security to the satisfaction of such justice (or mayor); he may commit him to the house of correction, to be kept to hard labour for ten days. f. 4.

On not paying the charges.

7. Also the charges of the information and conviction, shall be paid by the offender, if able, over and above the penalties; which charges shall be ascertained by such justice (or mayor). st. 11.

But for the information, summens, and conviction, no more

shall be paid to the justice's clerk, than 1 s. f. 15.

And if he shall not immediately pay such charges, or give security to the satisfaction of such justice (or mayor); he may commit him to the house of correction, to be kept to hard labour for six days, over and above such time for which he may be committed for non-payment of the penalties; and in such case, no charges of information and conviction shall be paid by any person.

Soldier or fea-

8. But if such foldier or seaman shall not so pay or secure the penalty, and also the costs of the information, summons, and conviction; he shall, instead of being committed to the house of correction, be ordered to be publickly set in the stocks for one hour for every single offence, and for any number of offences whereof he shall be convicted at one and the same time two hours. f. 5.

Torm of the conviction.

9. The conviction shall be in the words and form following;

Certiorari.

10. Which conviction shall not be removed by certiorari.

Conviction to be

fairly wrote over upon parchment, and returned to the next general or quarter fellions, to be filed by the clerk of the peace, and kept amongst the records. f. q.

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12. If

12. If any justice (or mayor) shall omit his duty, in the exe- Penalty on a cution of this act, he shall forfeit 5 /. half to the poor where he justice omitting shall reside, and half to him that shall sue in any court of record. 1.6.

13. Constable omitting his duty, shall on conviction, on oath Penalty on the of one witness, before one justice (or mayor), forfeit 40 s. to be constable. levied by diftress, half to the informer, and half to the poor; and if he have not fufficient goods whereon to levy, fuch justice (or mayor) may commit him to the house of correction, to be kept to hard labour for one month. f. 7.

14. And this act shall be publickly read four times in the year, Act to be read in all churches and chapels, by the minister, immediately after in the church. morning or evening prayer, on the Sundays next after Mar. 25. June 24. Sep. 29. and Dec. 25. on pain of 5 1. for every offence, to be levied by distress, by warrant of a justice (or mayor). J. 14.

15. But no person shall be prosecuted for any offence against Limitation of this act, unless it be within 8 days after the offence committed. actions.

16. By the 22 G. 2. c. 33. Persons belonging to his majesty's Navy. ships of war, guilty of profane oaths or curses, shall incur such punishment as a court martial shall impose.

#### Information.

Westmortand. THE information of A. I. of \_\_\_\_ in the county aforesaid, yeoman, made on oath this - day of in the \_\_\_\_ year of the reign of \_\_\_ before me J. P. esquire, one of his majesty's justices of the peace for the faid county : Who faith, at on \_\_\_\_ the \_\_\_\_ day of \_\_\_\_ now last past, at \_\_\_ in the parish of \_\_\_\_ in the county aforesaid, he heard That on \_\_\_\_ the \_\_ A.O. of --- in the said county, yeoman, swear one profane oath [or, curse one profane curse] in these words, to wit, &c.

#### Summons.

### Westmorland To the constable of-

WHEREAS information bath this day been made before me J. P. esquire, one of his majesty's justices of the peace for the said county, upon the oath of A. I. of - yeoman, that on A.O. of \_\_\_\_ in the faid county, yeoman, at \_\_\_ in the parish of \_\_\_\_ in the faid county, fewer one profane oath [or, curse one profane curse These are therefore to command you to cause the said A. O. forthwith to appear before me to answer the premiles, and to be further dealt withal according to law. Given under my hand and feal, at - in the faid county, the day of --- in the --- year of -

### Swearing.

#### Commitment.

Westmorland. To the constable of \_\_\_\_\_ in the said county, and to the keeper of the house of correction at \_\_\_\_\_ in the said county.

THEREAS A. O. of-- in the faid county, day labourer, is and stands convicted this day, before me one of his majesty's justices of the peace for the said county, of - day of this present month fwearing one profane oath, on the at - in the parish of - in the said county, whereby be bath forfeited the sum of 1 s. to the poor of the said parish of \_\_\_\_ And whereas the said A. O. hath refused and doth refuse to pay down the said sum of 1 s. for the use of the poor aforesaid, and also bath refused, and doth refuse to give satisfactory security to pay the same; These are therefore to require you the said constable to convey the faid A. O. to the house of correction at - aforesaid, and to deliver bim to the keeper thereof together with this warrant: And I do hereby command you the said keeper to recive him the faid A. O. into your custody in the faid house of correction, and there to detain and keep bim to bard labour for the space of ten days. And for so doing this shall be your sufficient war. Given under my band and feat at - in the faid coun-- day of - in the - year of the reign ty, the -

If he also refuseth to pay the charges, these words may be added—fatisfactory security to pay the same; And whereas the said A. O. bath likewise resused and doth resuse to pay the sum of 1s. which I have settled and ascertained as and for the charges of the proceedings against him touching the premisses, and hath resused and doth resuse to give satisfactory security to pay the same: These are therefore to require you—for the space of 16 days—

Sweets. See Excile.

Tanners. See Leather. Taylogs. See Buttons. Tea. See Ercise. Tenant. Sce Distress.

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## Thames.

ONCERNING regulations of the navigation on the river of Thames, the same being not general, it shall be sufficient only to mention the several acts touching the same; viz.

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28 3 P. & M. c. 16.	2 G. 2. c. 26.
1 7. c. 16.	4 G. 2. c. 24.
68 7 W. c. 16.	5 G. 2. c. 20.
11 & 12 W. c. 21.	6 G. 2. c. 29.
4 An. c. 13.	10 G. 2. c. 31.
9 An. c. 26.	24 G. 2. c. 8.

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Theft. See Larceny. Thefthote. See Felony. Threatning. See Surety.

### Tiles.

VERY person using the occupation of making tile, shall make it good, feafonable, and fufficient, and well whited and anealed. And the earth whereof it shall be made, shall be digged and cast up before the first of November, and stirred and turned before the first of February, and not wrought before the first of March; and before it be put to making of tile, shall be truly wrought and tried from stones; and the veins called malin or marle, and chalk, shall be severed from the earth whereof the tile is made: And plain tile shall be 10 1 inches long, 6 1 broad, and half an inch and half a quarter thick; roof tile or cress-tile, 13 inches long, half an inch and half a quarter thick, with convenient deepness; gutter tile and cover tile, 10 1 inches long, with convenient thickness, breadth and deepness. And if any person set to fale any tile made contrary to this ordinance, he shall forfeit to the buyer double value, and make fine and ransom at the king's will. And every person that feeleth himself grieved, and will fue, may have an action of debt against the offender. And the plaintiff in every fuch action may recover his costs. And the justices of the peace, and every of them, may hear and determine by their difcretions, as well by examination as otherwise, offences against this ordinance, as well at the king's suit as the party's who shall be grieved. And if it appear to the justices, or any of them, that any person hath offended herein, then the same justices shall assess upon the offender no less fine than for every 1000 of plain tile 5 s. for every 100 of roof tile 6 s. 8 d. for every 100 of corner tile or gutter tile 21. And the faid justices may call before them persons having knowledge in making VOL. II.

### Tithes.

of tile, to fearch and examine the digging, turning, parting, making, whiting, and anealing. And no person shall put to sale any tile before it be searched, on pain of forseiting the same. And if the searchers find any defaulters, they shall present them at the next sessions; which presentment shall be as effectual as that of 12 men. And the searcher shall have of the tile maker for his labour, for every 1000 plain tile searched 1 d. for every 1000 roof tile an half penny, and for every 100 of corner tile and gutter tile a farthing. Searcher making default shall forseit 10 s, to the king: And the justices may hear and determine the defaults of the searchers, in like manner as of the tile makers.

Cin. See Pelvter.

## Tithes.

I. Of small tithes due from any person.

II. Of great and small tithes and other church rates and payments, due from quakers only.

III. Of contempts for tithes in the spiritual court.

I Of small tithes due from any person.

W. c. 6. concerning small tithes only, due from any perfon whatsoever (whether quaker or not being no way material); and the 7 & 8 W. c. 34. and 1 C. ft. 2. c. 6. concerning quakers tithes only, great and small, and their other church dues. Nevertheless, the acts are intirely distinct in themselves, and the method of proceeding in the one case and in the other is different in almost every instance. I have therefore taken care to extricate them out of this consusion, by inserting them separately, and by drawing distinct forms upon each, according to the different methods of proceeding.

For what tithes.

1. And first, as to the small tithe act, 7 & 8 W. c. 6.—In this case, the prosecution must be for small tithes only, or compositions for the same; or for offerings, oblations, or obventions: and not otherwise. f. 1.

And they must not amount to above 40 s. a year from any one person. id.

And they must have become due within two years next before the complaint. f. 6.

And they must not be in London, nor in any place where the tithes are otherwise settled by act of parliament. f. 5.

And they must not have been begun to be sued for in the exchequer, or ecclesiastical court. f. 14.

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2. Of these demand must be first be made. f. t.

Demand.

3. And if any person shall fail in the payment of the same, by Complaint, the space of 20 days after such demand; the person to whom the same shall be due, may make complaint in writing to two justices of the peace, neither of whom is patron of the church or chapel, nor interested in the tithes. f. 1.

H. 6 G. K. and Furness. Order for non-payment of small tithes was qualhed, because said only upon complaint generally, and the

flatute requires the complaint to be in writing. Str. 264.

4. Whereupon the faid justices shall summon in writing under Summons, their hands and seals, by reasonable warning, every person against whom such complaint shall be made. f. 2:

5. And after appearance, or default of appearance (the warn-Hearinging or lummons being proved upon oath), the faid justices shall

proceed to hear and determine the complaint. f. 2.

6. And if on hearing the same, any person shall insist on a Pleading a prescription, composition, modus decimandi, agreement, or title, modus. whereby he ought to be freed from payment, and deliver the same in writing to the justices, subscribed by him, and shall then give the party complaining security to the satisfaction of the justices, to pay all such costs and damages, as upon a trial at law shall be given against him; in that case, the justices shall forbear to give judgment. f. 8.

7. Otherwise, they shall in writing under their hands and seals, Adjudications adjudge the case; and give such compensation, as they shall judge to be just and reasonable; and also such costs and charges, not exceeding 105. as upon the merits of the cause shall appear just.

Also they may give costs, not exceeding 10 s. to the party prosecuted, if they shall find the complaint to be false and vexatious.

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8. Of which adjudication notice shall be given to the party Demand.

complained of. f 3.

c. And if any person shall refuse or neglect by the space of ten Distress and sales days after such notice given, to pay or satisfy such sum adjudged; the constables and churchwardens, or one of them, shall by warrant under the hands and seals of the said justices, distrain his goods, and after detaining them three days (if the money, together with reasonable charges for making and detaining the distress, be not paid in the mean time) shall publickly sell the same, and pay to the party complaining the sum adjudged, retaining to themselves such reasonable charges for making and keeping the distress, as the said justices shall think sit. s. 3.

But by the 27 G. 2. c. 20. The distress shall be detained not less than four days, nor more than eight; and the officers may deduct the charges not only of making and keeping the distress, but also of the sale: but then the justices cannot by the said act of the 27 G. 2. adjust the quantum of the charges of sale, as they may by this act

the charges of making and keeping the diffress.

10. And if any person against whom judgment shall be ob-Distress out of tained, shall remove out of the county before the sum shall be the county. levied; the justices who made the judgment, or one of them, shall certify the same under hand and seal, to any justice of such

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### Tithes.

other county, who shall by his warrant order the same to be levied in like manner. f. 10.

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Appeal.

11. Any person aggrieved by the judgment of the two justices, may appeal to the next sessions; and if they confirm the judgment, they shall decree the same by order of sessions, and give costs against the appellant, to be levied by distress, as to them shall seem just and reasonable. f. 7.

Certierari.

12. And no proceedings herein shall be removed by certiorari, or otherwise; unless the title of such tithes, oblations, or obventions shall be in question. f. 7.

Adjudication to be recorded.

13. Finally, Every person who shall obtain any judgment, or against whom any such judgment shall be obtained, shall cause the same to be inrolled at the next sessions; for which the clerk of the peace shall have 15. s.

# II. Of great or small tithes, and other church rates and payments, due from quakers only.

For what tithes and dues.

1. This is upon the acts of the 7 & 8 W. c. 34. and 1 G. ft. 2. c. 6.—And the profecution in this case may be, for any tithes or church rates, or any customary or other rights, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel.

Provided that the fame do not exceed the value of 10/.— But no time is limited, within which the fame shall become due.

Complaint.

2. And where any quaker shall refuse to pay or compound for the same, any parson, vicar, curate, farmer, or proprietor of such tithes, or any churchwarden or chapelwarden, or other person who ought to have, receive, or collect, any such tithes, rates, dues, or payments, may make complaint to any two justices, other than such as is patron of the church or chapel, or any way interested in the tithes.

Note; here is no number of days limited, between the time of refusal and the complaint; nor is it hereby required that such complaint shall be in writing.

Summons.

3. Upon which complaint the faid justices shall summon in writing, under their hands and seals, by reasonable warning, such

Hearing.

4. And after appearance, or on default of appearance (the warning or fummons being proved before them upon oath), they may proceed to examine on oath the truth of the complaint, and to afcertain and state what is due and payable.

Adjudication.

5. And by order under their hands and feals, they may direct and appoint the payment thereof; so as the sum ordered (as is aforesaid) do not exceed 10 l. And also such costs and charges, as they shall think reasonable, not exceeding 10 s.

Diffres and fale.

6. And on refusal to pay, it shall be lawful for any one of the two next justices, by warrant under his hand and seal, to levy the same by distress and sale, rendring the overplus, the necessary charges of distraining being thereout first deducted and allowed by the said justices; unless it be in the case of appeal,

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and then no warrant of distress shall be granted, till after the appeal shall be determined.

Note again, here is no time limited between the notice of the adjudication, and the making out the warrant of distress. So that upon demand and refusal, it seemeth that the warrant of distress may be made out immediately, unless at the time of such demand, the party shall give notice of an appeal.

Also, here is no time limited for detaining the distress, nor charges allowed for the keeping of it; fo that it may be fold immediately.

And by the statute of the 27 G. 2. c. 20. which in all other cases gives the justices power, in their warrant of distress, to order the goods distrained to be detained for a certain time, not less than four days, the tithes and church rates of quakers (altho' not those other dues and payments) abovementioned are excepted.

Also, it is observable here, that the statute of the 7 & 8 W. limits the proceedings to the two next justices (not interested); and the statute of the 1 G. enlarges the same to any two justices (not interested) as to the complaint, summons, and order, but restrains the distress to the limitations in the statute of the 7 & 8 W. that is, to one of the two next justices as aforesaid; which possibly may have been an oversight; for it may happen hereupon, that neither of the two justices which made the order, can inforce the execution of it by diffress. To prevent which inconvenience, it may be proper that one at least of the justices complained to, be one of the two next justices (not interested).

7. Any person aggrieved by the judgment of the two justices, Appeal. may appeal to the next fessions; where if the judgment shall be affirmed, they shall decree the fame by order of sessions, and give costs against the appellant, to be levied by distress and sale,

as to them shall feem reasonable.

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8. And no proceedings herein shall be removed by certiorari, Certiorari, or otherwise, unless the title of such tithes shall be in question.

#### III. Of contempts for tithes in the spiritual court.

1. By the 27 H. 8. c. 20. If the ecclefiaffical judge shall, for Contempt of any contempt, contumacy, disobedience, or other misdemeanor, process. of any defendant in the case of tithes, make information and request to the justices of the peace of the shire where the offender dwelleth, to affift him to order and reform any such person; two of the faid justices (1 2.) may cause the person to be attached, and commit him to ward, till he shall have found sufficient surety, to be bound to the king by recognizance or otherwife, to give due obedience to the process, proceedings, decrees, and sentences of the ecclefiastical court where the suit shall be. f. 1.

2. And by the 32 H. 8. c. 7. If any person, after sentence Contempt after definitive given against him in the ecclefiastical court, shall obsti-judgment. nately and wilfully refuse to pay his tithes, or duties, or sums of money acjudged for the same; two justices (1 2.) may, upon information, certificate, or complaint in writing by the ecclefiaflical judge, cause the party refusing to be attached, and com-

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## Tithes.

mitted to the next gaol, till he shall have found sufficient sureties by recognizance or otherwise, to perform the said definitive sentence and judgment. f. 4.

Complaint for small tithes; on the 7 & 8 W. c. 6.

TO J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the county of \_\_\_\_\_ A. I. of \_\_\_\_\_ in the said county, clerk, bumbly complaineth,

Summons for small tithes; on the 7 & 8 W. c. 6.

Westmorland. { To the constable of

WHEREAS complaint in writing bath been made unto us—two of his majesty's justices of the peace for the said county, by A. I. of — in the said county, clerk, that A. O. of — in the parish of — in the said county, yeoman, bath for above the space of 20 days before the time of the said complaint so made unto us as aforesaid, refused to compound for, or to pay unto him the said A. I. and bath not yet compounded for, nor paid, the small tithes, offerings, oblations, and obventions, justly due from him the said A. O. to him the said A. I. These are therefore to command you forthwith, upon sight hereof, to summon the said A. O. to appear before us at the house of — in — in the said county, on Saturday the — day of this present month of — at the hour of — in the forenoon of the same day, to answer unto the said complaint. And he you then there to certify what you shall have done in the premisses. Given under our hands and seuls, at — in the said county, the — day of — in the — year of — in the said county, the

Order for payment of small tithes; on the 7 & 8 W. c. 6.

Westmorland. WHEREAS complaint in writing bath been made unto us two of his majesty's justices of the peace for the said county, by A.I. wicar of the parish

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parish of - in the faid county, that A.O. of - in the faid parish of - in the county aforesaid, yeoman, did refuse for the space of 20 days next before the time of the said complaint 10 made unto us as aforesaid, to pay or compound for his small tithes, offerings, oblations, and obventions, arifing in the said parish of - and due to him the faid A. I. We therefore the faid justices, being neither of us patron of the parish church of aforesaid, nor any ways interested in any of the said tithes, offerings, oblations, or obventions, having duly summoned the said A.O. before us, and having duly examined the truth and justice of the faid complaint upon oath, do find that there is justly due from the faid A.O. to the faid A.I. the fum of 41. being the value of the faid tithes, offerings, oblations, and obventions, become due within two years last past; and do therefore adjudge and order the aforesaid A. O. to pay or cause to be paid unto the said A. I. the aforesaid sum of 41. and also the sum of 10s. for the costs and charges of the Said A. I. in profecuting the faid A. O. for the recovery of his faid just dues. Given under our hands and feals at - in the faid county, the - day of - in the year of the reign of -

Distress for small tithes; on the 7 & 8 W. c. 6.

Westmorland. 

To the constable of —— in the said county, and to the churchwardens of the parish of —— in the said county, and to every of them.

WHEREAS upon the complaint in writing of A. I. vicar of the parish of - aforesaid, in the county aforesaid, A.O. of in the said parish in the county aforesaid, yeoman, bath been duly summoned to appear before us of his majesty's justices of the peace for the said county, to be examined for the non-payment of his small tithes, offerings, oblations, and obventions, due unto the faid A. I. And whereas we the faid justices, being neither of us patron of the parish church of aforesaid, nor any way interested in any of the said tithes, offerings, oblations, or obventions, have duly examined the truth and suffice of the said complaint, and have ordered him the said A. O. to pay unto the said A. I. the sum of 41. being the value of the small titbes, offerings, oblations, and obventions become due from him the said A.O. to him the said A.I. within two years next before the said complaint so made unto us as aforesaid, together with the sum of 10s. for the costs and charges of the Said A. I. for the recovery of his said just dues; making in the whole the sum of 41. And whereas it appeareth unto us the faid justices, that the Said A.O. bad due notice of our said order for the space of ten days and upwards before the day of the date bereof, but bath re-Jused to pay, and hath not yet paid the said sum of 41. 10s. nor any part thereof: These are therefore to command you, jointly and severally, that you, or some, or one of you, do forthwith distrain the goods and chattels of the said A.O. and in case the said sum Kk4

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of 41. 10 s. together with your reasonable charges of making and detaining the said distress, be not paid or tendred to be paid by him the said A.O. in [four] days next after such distress made, that then you do make publick sale of the said goods and chattels so distrained as aforesaid, and out of the money arising from such sale, that you pay or cause to be paid unto him the said A.I. the said sum of 41. 10 s. and thereout also deduct and detain your reasonable charges of making, keeping and selling the said distress; and if any overplus shall remain, after such payment and deduction as aforesaid, that then you do render the same unto him the said A.O. upon demand. Given under our hands and seals at — in the said county, the day of — in the minds.

Summons of a quaker for tithes; on the 7 & 8 W. c. 34. and 1 G. ft. 2. c. 6.

Westmorland. { To the constable of - in the said county.

HEREAS A. I. clerk, rector of the parish church of in the said county, hath complained unto us J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county, that A. O. of \_\_\_\_\_ in the parish of \_\_\_\_\_ aforesaid, in the county aforesaid, yeoman, being a terson commonly called a quaker, hath resused to pay unto him the said A. I. or to compound for the tithes, and other rights, dues, and payments belonging to the church of \_\_\_\_\_ aforesaid, and justly due to him the said A. I. from him the said A. O. These are therefore to require you forthwith to summon the said A. O. to appear before us at the house of \_\_\_\_\_ in the said county, on Saturday the \_\_\_\_\_ day of this present month of \_\_\_\_\_ at the bour of \_\_\_\_ in the sound then there to certify what you shall have done in the premisses. Given under our hands and seals at \_\_\_\_\_ in the said county, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_\_.

Order for quakers tithes; on the 7 & 8 W. c. 34. and 1 G. ft. 2. c. 6.

Westmorland. WHEREAS complaint bath been made unto the peace for the said county, by A. I. vicar of the parish of in the said county, that A.O. of the parish of aforesaid in the county aforesaid, being a person commonly called a quaker, bath resused to pay to, or to compound with him the said A. I. for his tithes, and other rights, dues, and payments, belonging to the church of aforesaid, and justly due unto him the said A. I. We therefore the said justices, being neither of us patron of the parish church of aforesaid, nor any way interested in any of the said tithes, rights, dues, or other payments, having duly summoned the said A. O. before us, and having also duly examined the

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truth of the said complaint upon oath, do find that there is justly due for the same from the said A.O. to him the said A.I. the sum of 101. and do order and appoint the aforesaid A.O. to pay or cause to be paid unto him the said A.I. the aforesaid sum of 101. And we do also order and appoint the aforesaid A.O. to pay or cause to be paid unto him the said A.I. the surther sum of 103. for such costs and charges concerning the premisses as upon the merits of the cause do appear to us just and reasonable. Given under our hands and seals at \_\_\_\_\_ in the said county, the \_\_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_\_

Distress for quakers tithes; on the 7 & 8 W. c. 34. and 1 G. st. 2. c. 6.

Westmorland. { To the constable of \_\_\_\_\_\_

WHEREAS upon the complaint of A. I. vicar of the in the parish aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, bath been duly summoned to appear before J. P. and K. P. elquires, two of his majesty's justices of the peace in and for the said county, to be examined for non-payment of bis tithes, and other rights, dues, and payments, belonging to the church of - aforesaid, and due unto him the faid A. I. from him the said A.O. And whereas the Said justices, upon examination thereof, have ordered bim the fuid A.O. by writing under their hands and feals, to pay unto the faid A. I. the fum of 101. for such his tithes, and other rights, dues, and payments as aforefaid, and moreover the sum of 10s. for the charges of him the Said A. I. in recovering the same, making in the whole the sum of 101. 10s. And whereas it appeareth unto me J. P. esquire, being one of the faid justices, and also being one of the two next justices to the parish church of - aforesaid, in the county aforesaid, not being patron of the said church, nor any way interested in any of the said tithes, or other rights, dues, or payments, that the faid A.O. bath bad due notice of the faid order, but bath refused, and doth refuse to pay, and bath not paid, the said sum of 10 l. 10 s. nor any part thereof: These are therefore to authorize and command you, that you do forthwith levy the aforesaid sum of 101. 10s. by diffress and sale of the goods and chattels of him the faid A.O. and out of the money arising from such sale, that you do pay or cause to be paid unto him the said A. I. the said sum of 101. 10 s. and thereout also deduct your necessary charges of distraining. And if any overplus shall remain, after such payment and deduction as aforefaid, that you do render the same unto him the Said A. O. Given under my band and seal at - in the faid county, the in the \_\_\_\_ year of the reign of \_\_\_\_

### Tobacco.

A Trickn

Concerning the exporting of tobacco pipe clay, See Moollen Danufacture.

Planting tobacco. ing the fame, or the value thereof, or 40 s. for every rod or pole of ground planted with it, half to the king, and half to him that shall sue in any court of record. 12 C. 2. c. 34. f. 1. And besides the said penalty, he shall moreover forseit 10 l. for every rod or pole; one third to the king, one third to the poor, and one third to him that shall sue in like manner. 15 C. 2. c. 7. f. 18.

And by the faid act of the 15 C. 2. c. 7. (which by the 5 G. c. 11. is continued along with the act of tonnage and poundage of the 12 C. 2. c. 4.) the justices shall a month before every sessions, iffue their warrants to all high and petty constables, to search what tobacco is planted, cured, or made, and by whom; and to make presentment in writing on oath at the next sessions, of the names of such persons as have planted, cured, or made any tobacco, and what quantity of land is or was planted, and who are the tenants or occupiers thereof (who shall also be deemed the planters). s. 2.

Which presentment shall be filed by the clerk of the peace in open sessions; and after such filing, shall be a sufficient conviction in law of the persons presented, unless such person presented (having notice given to him of the presentment by delivery of a copy thereof to him, or leaving such copy at his usual place of abode in the presence of one witness, ten days before the next quarter sessions) shall at the next sessions after such notice, traverse the presentment, and find sureties for prosecuting and trying such traverse at the quarter sessions next after such traverse entred or

made. f. 3.

And all constables, bailiss, and other publick officers, shall within 14 days after warrant from two justices, calling to their assistance whom they shall find necessary, pluck up, burn, consume, tear in pieces, and utterly destroy all tobacco seed, plant, and leaf planted, sowed, or growing in any field or ground.

planted, fowed, or growing in any field or ground. f. 4.

And if any tobacco shall be suffered to grow, or be consumed in seed, plant, or leaf, by the space of 14 days after receipt of such warrant by the said constables or other officers; they shall for every offence forfeit 5. for every rod, perch, or pole of ground planted with tobacco, and so proportionably for a greater or lesser quantity, half to the king, and half to him that shall sue.

And if any shall refuse or neglect to affift the constable, he shall on conviction before two justices, forfeit 5 s. to be levied by warrant of the said justices by distress; and if no distress

f. 6.

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or fha can be found, to be committed to the common gaol for one week.

And if any person shall result the constable or other person in the due execution hereof, he shall, on conviction before two justices, forfeit 5 l. by warrant of the said justices by distress; and if no distress can be found, to be committed to the common gaol for three months. f. 7:

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But nothing herein shall hinder planting the same in gardens for physick or chirurgery, so as the quantity planted exceed not half a pole of ground. 12 C. 2. c. 34. f. 4. 22 5 23 C. 2. c. 26.

2. Every person who shall cut any walnut, hop, sycomore, or Adulterating toother leaves, or any other herbs, plants, or materials (not being bacco and snuff,
tobacco leaves or plants), or shall colour or cure any such, to
make the same resemble tobacco; or shall sell the same mixed or
unmixed for tobacco,—shall forfeit 5 s. a pound, half to the king,
(charges of the prosecution first deducted) and half with sull costs
to him who shall sue. 1 G. ft. 2. c. 46. f. 1.

And every person who shall make, mix, or colour any snuff, with oker, umber, or other colouring, except water tinged with Venetian red only; or shall mix with snuff, any sustick or yellow ebony, touchwood, or other wood, or any dirt, sand, or small tobacco sisted from tobacco,—shall forfeit the same, and 3 l. for every pound weight, half to the king, and half to him that shall sue. 1 G. fl. 2. c. 46. f. 7. 5 G. c. 11. J. 22.

And all fuch leaves and other materials, and all engines, utenfils, and tools for working the same, may be fearched for and seized, by warrant of three commissioners of the treasury or of the customs. 1 G. ft. 2. c. 46 f 3.

But no house or warehouse shall be opened to search for or seize the same, but at seasonable hours, and not without a special warrant from two justices of the peace. s. 4.

And the faid materials or engines found and feized within fix miles of any port, shall be brought to the next customhouse warehouse; and if at a greater distance from any port, shall be secured by order of two justices at the king's charge, till the cause of such seizure shall be determined at the next, or at farthest the second quarter sessions after seizure; and the same, after condemnation or recovery by judgment of such sessions, shall be openly burned or destroyed by order of the same, at his majesty's charge.

And any fervant employed in manufacturing or felling such leaves or materials, shall on conviction before two justices, by oath of one witness, be committed to the common gaol or house of correction, to be kept to hard labour not exceeding six months.

3. By the 24 G. 2. c. 41. and the 26 G. 2. c. 13. No tobacco, Carrying tobacco or stalks, exceeding 24 lb. weight, nor any snuff exceeding 10 lb. or snuff by land. shall be conveyed by land; unless, if it is unmanufactured tobacco, a certificate be first had from the officers at the port of importation, together with the importer's oath thereto, that the duties were paid or secured at the importation, and when, and in what vessel it was imported;

imported; and if the person applying for the certificate be a purebaser from the importer, then on his oath, attesting the marks and numbers of the identical hogsheads purchased, or out of which the tobacco was taken, and from whom purchased, and when; and if he be a second purchaser, then on his oath in like manner, provided that if it is an entire hogshead, the name of the seller may be omitted in such certificate.

And if it is tobacco fialks or fuuff, or other manufactured tobacco, then not without a certificate and oath of the importer being first had, that such stalks were stripped, or snuff or other manufactured tobacco was made from one or more hogsheads, for which the duties were paid or secured at the importation; and if the person applying for the certificate be a purchaser, he shall make oath that such stalks were stripped, or such snuff or other manufactured tobacco was made from one or more hogsheads, which had been delivered and received according to the directions of the said act

of the 24 G. 2.

And before any fuch tobacco, or stalks, or fnuff, shall be removed by land, the proprietor or his agent shall insert on the back of the certificate, the package, with the marks and numbers fet thereon, and the weight of each species of goods contained in each package, and the place from whence, and to which they are to be carried, and by whom, or the inn from whence, and to whom configned; and shall subscribe his name, and make oath to the truth thereof; and the certificate shall express the number of days it shall continue in force, and shall accompany the goods; and upon its arrival, the owner of the goods shall deliver it to the chief officer of the customs; and if there be none such, then to the officers of excise, who shall examine the same with the goods, and if they agree, the goods may be taken away by the owner, and the officer shall thereupon enter such certificate in a book for that purpose, and transmit an account thereof to the officer appointed by the treasury for keeping such accounts.

And if any tobacco, or stalks, exceeding 24 lb. or snuff exceeding 10 lb. shall be sound removing by land from the port of importation, without having one or other of the certificates before directed; the same, together with the packages, horses, and carriages shall be forseited; and the carrier shall besides be committed to the county gaol for one month by one justice where the of-

fence shall be committed, or the offender shall be found.

And any officer of the customs or excise may seize the same, and prosecute; and the proof that the same had been removed with a proper certificate, and that the duties had been paid or se-

tured, shall be on the claimer, and not on the officer.

And no tobacco or stalks exceeding 24 lb. nor souff exceeding 10 lb. which shall have been carried coastwife, from the port of importation to any other place, shall be removed from thence by land, without a certificate from the officers of the port to which they were carried coastwife, that it appears to them by the entries of the certificates in their books which came with the goods from the place of importation, that the duties were paid, and also in what vessel they were brought, and when, and also that the per-

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fon applying to them for the same, had made oath to the truth thereof; and before such goods shall be removed by land, the proprietor or his agent shall insert on the back of the certificate, the names of each package, with the marks and numbers thereon, and the weight of each species in each package, and the place from and to which they are to be carried, and the name of the person to whom sent, and shall subscribe his name, and make oath to the truth thereof: And if any such goods shall be found removing without such certificate, or if it appear that such certificate is forged; the goods, package, horses, and carriages shall be forseited, and the carrier shall also forseit to l. and be committed to the county gaol for one month, by one justice where the offence shall be committed, or the offender shall be found. so

And no tobacco or stalks exceeding 24 lb. nor snuff exceeding 10 lb. shall be conveyed by land, unless the package be marked on the outside, with the respective words tobacco, tobacco stalks, or snuff, in letters not less than three inches in length; on pain of soficient of the same, with the package, and 1 s. a pound to be paid by the owner. s. 23.

The faid penalties to be half to the king, and half to him that shall sue in any of the courts at Westminster. f. 33.

### Coll. See Miller.

### Toin.

1. HE sheriff's torn is the king's court of record, holden Torn, what before the sheriff, for redressing of common grievances within the county. 2 Harv. 55.

2. And forasmuch as the sheriff did go in circuit twice every Meaning of the year, throughout every hundred within the county, it was called word.

tour, or tourn, which signifieth a circuit or perambulation.

2 Inft. 70.

3. By the 31 Ed. 3. ft. 1. c. 15. The sheriff shall make his When to be turn yearly, once within a month after Easter, and another time holden. within a month after Michaelmas; and if he holds it in other manner, he shall lose his turn for the time; that is, the court so holden for that time shall be void, and the sheriff shall lose the profits thereof. 2 Inst. 71.

And he shall keep his turn no where but in due place and accustomed. 9 H. 3. c. 35.

4. Peers, clergymen, and tenants in ancient demesne, are Who are to apprivileged from appearing at the torn. 52 H. 3. c. 10. pear at the torn. 2 Haw. 57.

Also they that have hundreds of their own shall not be bound to appear at the turn, but in the bailiwicks where they be dwelling. 52 H. 3. c. 10.

But all other persons, being above the age of 12 years, are bound to attend at such courts, in order to make inquiry of all

### Toan.

common grievances, and also to give security to the publick for their good behaviour, by taking an oath to be faithful to the king, and to observe his laws, and also by incorporating themselves into some free pledge or tithing, which formerly signified a certain number of families living together in the same precinct, the masters whereof were every one of them mutually bound for each other, and punishable for the default of any member of any such family, in not appearing to answer for himself on any accusation made against him. 2 Haw. 55.

Jurors in the torn.

5. No bailiff, or other officer, shall return or impanel any perfon upon an inquisition in the torn, but such as be of good name and same, and have 20s. a year freehold within the shire, or 26s. 8d. customary or copyhold; on pain of 40s. and the sheriff other 40s. half to the king, and half to him that will sue: and an indictment otherwise taken shall be void. 1 R. 3. c. 4.

But if the party except not to it upon his arraignment, he is

concluded by that omission. 2 H. H. 70.

And the jury shall put their seals to their inquisitions. 13 Ed. 1.

c. 13.

Indictments to be indented.

6. And indictments in the torn shall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inquest. 1 Ed. 3. c. 17.

Distress and sale.

Within what

7. It feems to be fettled at this day, that a diffress is incident of common right to every fine and amercement in the torn; and that the offender's goods may be diffrained in any lands within the precinct of the court, or in the highway; and that the goods diffrained may be sold. But the bailiff must have a special warrant to make diffress. 2 Haw. 60, 61.

Or the fine may be recovered by action of debt. 2 Haw. 61.

8. But no offence is cognizable in the torn, unless it arise since

time offences are the holding of the last court. 2 Haw. 66.

ognizable in the torn.

9. It feems to be agreed, that a presentment in the torn, of any offence within the jurisdiction of the court, being neither capital, nor concerning any freehold, subjects the party to a fine or

amerciament, without any traverse. 2 Haw. 71.

Indictment to be certified to the fessions.

10. By the magna charta, c. 17. The sheriff is restrained in his torn, from hearing and determining indictments of selonies; yet the sheriffs did commonly make out process or precepts in nature of capias to arrest the parties; but by the 1 Ed. 4. c. 2. their power of making out process upon these indictments is taken away, as well in cases of indictments of selony as other misdemeanors within their cognizance, but they are to deliver all such indictments and presentments to the next sessions, who are to make out process thereupon, and hear and determine them. 2 H. H. 71.

And the elfreats of the fines thereupon shall be inrolled, and by indenture be delivered to the sheriff, to the use of him that was sheriff at the time of the indictment so taken in the torn as afore-

faid. 1 Ed. 4. c. 2.

Conflables chofen in the torn, 11. The constables of common right are to be chosen and fworn in the torn or leet. 2 Hazv. 62.

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# Transportation.

HERE any person shall be convicted of grand or petit For felonies larceny, or any felonious stealing or taking of money or within clergy. goods, within the benefit of clergy, and liable only to burning in the hand or whipping (except persons convicted for receiving or buying stolen goods, knowing them to be stolen) the court before whom he shall be convicted, or any subsequent court held with like authority, instead of ordering him to be burnt in the hand or whipt, may order him to be fent as foon as conveniently may be, to fome of his majesty's plantations in America, for seven years; and shall have power to convey, transfer, and make over such offender, by order of court, to the use of any person who shall contract for the performance of such transportation, to him and his assigns, for se-4 G. c. 11. f. 1. 6 G. c. 23. f. 1.

2. And where any offender shall be convicted of any crime, For felonies for which he is excluded the benefit of clergy, and the king shall without benefit be pleased to extend mercy to him, on condition of transportation of clergy. to any part of America, and such intention of mercy be fignified by a principal fecretary of state, it shall be lawful for any court having proper authority, to allow such offender the benefit of a pardon under the great feal, and to order the like transfer and conveyance, to any person (who will contract for the performance of such transportation) and to his affigns, of such offender, as also of any person convicted of receiving or buying stolen goods knowing them to be stolen, for the term of 14 years, in case such condition of transportation be general, or else for such other term as

shall be made part of such condition. 4 G. c. 11. f. 1. 3. Every fuch person, to whom any such court shall order the Contract for offender to be transferred or conveyed, before he shall be delivered transportation. over to him or his assigns to be transported, shall contract with such person as shall be ordered by the court, and give sufficient security to the fatisfaction of fuch court, that he will transport, or cause to be transported effectually, such offender, to such of his majefly's plantations in America as shall be ordered by the court, and procure an authentic certificate from the governor, or the chief cultom house officer of the place (which they shall give without ice) of the landing of such offender (death and casualties of the lea excepted), and that the faid offender shall not be suffered to return from the faid place to any part of Great Britain or Ireland, by the wilful default of fuch person so contracting, or of his al-4 G. c. 11. f. 3.

4. The court may appoint, if they think fit, two or more ju- Persons impowfices where the offender shall be convicted, who shall have power ered to contract, to contract with any person for performance of the transportation; and may order the like fecurity, and cause the felons to be deli-

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## Transportation.

vered by the gaoler to the person contracting, or his assigns; which contracts and security shall be certified by the justices who shall make and take the same, to the next court held with like authority for the place where the selon was convicted, to be filed and kept amongst the records of such court. 6 G. c. 23. f. 2.

Bond for transportation. 5. And all fecurities for transportation shall be by bond in the name of the clerk of the peace, who shall (by such suit as the justices in sessions shall direct) prosecute such bond in his own name, and be paid such costs as he shall sustain in such suit for the penalty of such bond, or otherwise howsoever by reason thereof, out of the publick stock by the treasurer; and all money recovered on such bond, shall be to the use of the county or place, and be paid to the treasurer, and be part of the publick stock. 6 G. c. 23.

Conveying to the port.

6. The person so contracting, and to whom any selon shall be delivered to be transported, or any person directed by the said justices (impowered to contract as aforesaid), or their assigns, may in such manner as they think sit, carry and secure the selon, in and thro' any county, toward the sea port; and if any person shall rescue such selon, or assist him in escaping, he shall be guilty of selony without benefit of clergy. 6 G. c. 23. f. 5.

Charges of transpertation.

7. All charges in and about making the contracts, taking fecurities, and conveying of felons in order to be transported, shall be born by the county or place for which the court was held; and the treasurer shall, by order of the justices in sessions, pay the same to such persons as shall be employed for the purposes aforesaid. 6 G. c. 23. f. 3.

Escaping from on shipboard.

8. If any person shall assist any felon to attempt his escape, from any boat or vessel carrying selons for transportation, he shall (being prosecuted within a year) be guilty of selony, and transported for seven years. 16 G. 2. c. 31. f. 3, 4.

Persons transporting themselves voluntarily. o. Where any person of the age of 15, and under 21, shall be willing to be transported, and to enter into any service in any of his majesty's plantations in America, it shall be lawful for any merchant or other, to contract with him for such service, not exceeding eight years; provided such person come before the lord mayor or a justice of the peace, if the contract be in London, or before two justices if elsewhere, and before him or them acknowledge such consent, and sign the contract in his or their presence, and with his or their approbation. And then it shall be lawful for such merchant or other, to transport such person, and keep him according to the contract: Which said contract, and approbation of such magistrate or magistrates, with the tenor of such contract, shall be certified by such magistrate or magistrates to the next sessions, to be registred by the clerk of the peace without see. 4 G. 11. f. 5.

Returning from transportation.

10. And if any offender so ordered to be transported, shall return into Great Britain or Ireland, before the end of his term, he shall be liable to be punished as a person attainted of felony without benefit of clergy, and execution shall be awarded against him accordingly. 4 G. c. 11. f. 2.

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11. And by the 16 G. 2. c. 15. If any felon or other offen. Being at large der, ordered for transportation, or having agreed to transport him- after order or felf on certain conditions either for life or any number of years, transportation. shall be afterwards at large in any part of Great Britain, without some lawful cause, before the expiration of the term; he shall be guilty of felony without benefit of clergy. J. 1.

And he may be tried at the affizes of the county or liberty where he shall be apprehended, or from whence he was ordered to be transported; and the clerk of affize, and clerk of the peace, where fuch orders of transportation shall be made, shall, at the request of the profecutor, or any other in the king's behalf, certify a transcript briefly and in a few words, containing the effect and tenor of every indictment and conviction of such felon, and of the order and contract for transportation, to the judges where he stall be indicted (not taking for the same above 2 s. 6 d.) which certificate being produced in court shall be a sufficient proof that such person hath been convicted and ordered to be transported. 16 G. 2. c. 15. f. 2. 6 G. c. 23. f. 6, 7.

Order and contract | So it is in the original record; but in Mr. Hawkins's edition of the statutes, it is order or contract, which may induce a mistake: for as the words order or contract do imply, that a person may be convicted upon a certificate either of the one, or of the other, it may happen in fuch case that an innocent person shall be condemned; for if a contract for transportation shall be certified only, and not the order for transportation, it is possible there may never have been any such order, and then such contract, being without the party's own confent or knowledge, and without any order to support it, is void.

12. And whoever shall discover, apprehend, and prosecute to Reward for apconviction of felony without benefit of clergy, any fuch offender, prehending fuch shall be intitled to a reward of 20 1. and shall have the like certi-perion. ficate, and like payments made, without fee, as any persons may be intitled to for the apprehending, profecuting, and convicting

of highwaymen. 16 G. 2. c. 15. J. 3. 13. But the king may at any time pardon and dispense with the Pardon. transportation, and allow of the offender's return, he paying to his proprietor such sum as shall be adjudged reasonable by any two justices of the peace within the province where such proprietor And where the offender shall have served his term, such service shall have the effect of a pardon. 4 G. c. 11. s. 2.

### Traberse.

RAVERSE took its name from the French de tra- Traverse, verse, which is no other than de transverso in Latin, whence, fignifying, on the other fide; because as the indictment on the one fide chargeth the party, so he on the other fide cometh in to difcharge himself. Lamb. 540.

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Traverse, what. 2. To traverse an indictment then, is to take iffue upon the chief matter thereof; which is the same as if one shall fay, to make contradiction, or to deny the point of the indictment: As in a presentment against a person for a highway overslowed with water, for default of scouring a ditch, which he, and they whose estate he hath in certain lands there, have used to scour or cleanse; such person may traverse either the matter, to wit, that there is no highway there, or that the ditch is sufficiently scoured; or otherwife, he may traverse the cause, to wit, that he hath not that land, or that he and they whose estate he hath have not used to fcour the ditch. Lamb. 541.

Form of a traverfe,

3. And forasmuch as in the record of one traverse, there is at once discovered, the style of the sessions, the indictment, the procels to answer, the traverse it self, the verdict, and judgment thereupon, the process of execution, the yielding of the parties, and the affesiment of their fines, so that it alone may serve instead of all, it is judged requisite to infert the fame as follows:

(Style of the feffions.)

Somerset. HERETOFORE, to wit, at the fessions of the peace beld at Bridgewater in the county aforefaid, on the Tuesday next before the feast of St. Matthew the apostle, in the
year of the reign of \_\_\_\_\_ by the grace of god, of Great
Britain, France, and Ireland, king, defender of the faith, and so forth, before J. P. and K. P. esquires, and others their affociates, justices of our said lord the king, assigned to keep the peace in the county aforesaid, as also to hear and determine divers felonies, tresposses, and other misdemeanors in the same county committed, by the oath of twelve jurors it is presented, that John Long of -R. M. of -- and T. L. of - with divers others unknown, evil doers and disturbers of the peace of our faid lord the king, in a warlike manner arrayed, joined and assembled, on the ---- day of - in the night of the same day, in the year aforesaid, with force and arms, to wit, with fwords, flaves, clubs, guns, and other w. Willet (called B.) unlawfully, riotoufly, and routoufly broke and entred, and eight waggon loads of hay, to the value of then and there being, of the goods and chattels of the faid W. W. then and there unjustly and unlawfully took and carried away, against the peace of our said lord the king, and against the form of the flatute in that case made and provided: Whereupon it was commanded to the sheriff, that he should not omit, &c. but cause them to come to answer. And afterwards, to wit, on the Tuesday afortfaid next before the feast of St. Matthew the apostle, in the year aforesaid, before the aforesaid justices, came the aforesaid J. I. R. M. and T. L. in their proper perfons, and having had the hearing of the indictment aforefaid, fewerally say, that they are thereof not guilty, and of this they put themselves upon the country; and Adam Martin, who for our lord the king in this behalf profes cutes, in like manner &c. Therefore let there come thereupon a jury before the justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine &c. at the sessions of the peace at Welles &c. on the Tuesday next after the - Epiphany

(The indictment.)

(Process to an-Iwer.) .

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Epiphany of our lord then next to be bolden, And who &c. To recognize &c. Because as well &c. The same day is given as well (Day given.) to the aforesaid A. M. who prosecutes &c. as to the aforesaid J. L. R. M. and T. L. Sc. To which fessions of the peace holden at W. aforesaid in the county aforesaid, on the aforesaid day &c. before and their affociates, justices of our faid lord the king, affigned to keep the peace in the county aforesaid, and also to bear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, came as well the aforesaid A. M. who proheutes &c. as the aforefaid J. L. R. M. and T. L. in their proper persons. And the jurors aforesaid, by the sheriff of the county (Verdict.) aforesaid for this impanelled, and demanded, to wit, A. B. C. D. Ec. likewise did come, who to say the truth concerning the premisses being tried and sworn, say upon their oath, that the aforesaid J. L. R. M. and T. L. are guilty, and every of them is guilty, of the trespals, contempt, and riot aforefaid, in the indictment aforefaid above specified, in manner and form as against them is above supposed. Therefore it is considered by the court, that the aforesaid (Judgment.) J. L. R. M. and T. L. be taken to fatisfy our lord the king of their fines, by occasion of the trespass, contempt, and riot aforesaid. (Process of exe-Which J. L. R. M. and T. L. then and there present in court, cution.) prayed that they to a fine with our laid lord the king, by the occasion aforesaid, may be admitted; and thereof they put themselves severally upon the mercy of our lord the king. And the fine of the same J. L. (Fine affested.) by the justices aforesaid is assessed, at 31.6s.8d. and the fine of the same R. M. is affessed at 20s. and the fine of the same T. L. is affessed at 5 l. of good and lawful money of Great Britain, to the use and behoof of our said lord the king. Lamb. 543.

4. Every defendant indicted for a misdemeanor, should give Notice of trials full eight days notice of trial to the prosecutor, before the affizes, if the trial is to be there; if at the sessions, it is usual to give two or three days notice. Cr. Circ. 20, 48.

### Treason.

1. TREASON, according to Lord Coke, is derived from Meaning of the trabir, to betray; and trabison, by contraction treason, word treason. is the betraying it self. 3 Inst. 4.

Treason, generally spoken, is intended, not of petit treason,

but of high treason only. I H. H. 316.

2. Notwithstanding that treason and misprision of treason are Power of justices not within the letter of the commission of the peace, yet inast of the peace much as they are against the peace of the king, and of the realm, therein.

any justice of the peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence. And such justice may take the examination of the person so apprehended, and the information of all those who

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Bail.

Treason by the

25 Ed. 3.

can give any material evidence against him, and put the same in writing; and also bind over such who are able to give any such evidence, to the king's bench, or gaol delivery, and certify his proceedings to such court. 2 Haw. 39. Hal. Pl. 168. 1 H. H. 372.

3. And having committed the offender (for he is by no means bailable by justices of the peace, 3 Ed. 1. c. 15. 2 Haw. 99.) it may be advisable for him to fend an account immediately of all

the particulars, to a fecretary of state.

4. By the statute of the 25 Ed. 3. st. 5. c. 2. (which Lord Hale calls a facred act; and Lord Coke an excellent act, and the king who made it a blessed king, and the parliament a blessed parliament;) All treasons which had been uncertain before, were settled. Which act, by the 1 Mar. sess. 1. c. 1. is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of the 25 Ed. 3. and 1 Mar. which made any offences high or petit treason, or misprission of treason, are abrogated; so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 Ed. 3. or made such by some statute since the 1 Mar.

And therefore I shall first consider such offences as are high treason within the said statute of the 25 Ed. 3. and then such as are made treason by statutes subsequent to the said statute of the 1 Mar.

The words of the statute of the 25 Ed. 3. as to this matter, are as follows:

Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not; the king, at the request of the lords and commons, bath made a declaration in the manner as bereafter followeth; that is to say, When a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion (that his, his wife, 3 Inft. 9.) or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere; and thereof be probably (proveablement, proveably) attainted of open deed, by the people of their con-And if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the money to be false; and if a man flay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices.

And by the statute of the 1 Mar. seff. 1. c. 1. (which Lord Hale calls another excellent law) No act, deed, or offence being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the 25 Ed. 3. And

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cessar conse the sa this (he fays) at one blow laid flat all the numerous treasons at any time enacted fince the 25 Ed. 3. 1 H. H. 308.

Of open deed ] Lord Coke (3 Inft. 14, 140.) feems to be of opinion, upon the faid act of the 25 Ed. 3. that bare words are not a sufficient overt act, or open deed, whereby to convict a perfon of treason; but that they are misprisson of treason only. So also Lord Hale (1 H. H. 111, 118. and elsewhere throughout) feemeth to think, that words, unless put into writing, are not regularly an overt act. But Mr. Hawkins (1 Haw. 39.) argues the contrary, and amongst other reasons for his opinion, he observes, that to charge a man with speaking treason is unquestionably actionable, which could not be, if no words could amount to treafor: also, that as in case of felony, he who by command or perfuafion induceth another to commit felony, is an accessary in felony, so he who does the same in treason is a principal traytor (there being no accessaries in treason, but all being principals); and yet fuch person doth no act but by words.

And it has been the constant practice, ever fince the revolution at least, where a person by treasonable discourses hath manifested a design to murder or depose the king, to convict him upon such evidence. And in Lowich's case, Holt Ch. J. declared, that express words were not necessary to convict a man of high treason; but if from the tenor of his discourse the jury is satisfied he was engaged in a defign against the king's life, this is sufficient to convict

Read. Treaf. 146. the prisoner.

5. Offences made treason since the 1 Mar. are as follows:

(1) With regard to the pretender—By the 6 An. c. 7. If the 1 Mar. any person shall by writing or printing affirm, that the pretender hath any right to the crown, or any other person otherwise than according to act of parliament, he shall be guilty of high treason. And if any person shall by preaching, teaching, or advised speaking affirm the same, he shall incur a præmunire.

But no person shall be prosecuted for words, unless oath be made thereof before a justice in 3 days; and the prosecution be within 3 months; and the conviction on the oath of two

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And by the 13 W. c. 3. If any person shall hold any correspondence with the pretender, or any person employed by him, or shall remit any money to his use, he shall be guilty of high treason. And by the 17 G. 2. c. 39. This is extended to the pretender's fons.

(2) Offences in relation to the coin, are made treason by many

flatntes; which are treated of in title Coin.

(3) Also there are many offences made treason, with regard to the popish usurped jurisdiction; which are treated of under

title Popery.

6. In high treason, as hath been said before, there are no ac- Accessaries in cessaries, but all are principals; and therefore whatsoever act or high treason. consent will make a man accessary to a felony before the act done, the same will make him a principal in case of high treason. 3 lnft. 9. 21.

Treasons since

### Treason.

Profecution to be in 3 years.

7. By the 7 W. c. 3. No persons shall be prosecuted for high treason, but within 3 years after the offence committed; except in the case of designing to assassinate the king's person.

Trial to be the next term.

8. And by the 31 C. 2. c. 2. Persons committed for high treafon, shall be indicted the next term, or next affize; otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not be produced in that time; and in such case, they shall be indicted the second term or affize, or else discharged.

Copy of the in-

9. Persons indicted for high treason whereby corruption of blood shall be made, or for misprission of such treason (except for counterfeiting the coin, the great seal, privy seal, privy signet, or sign manual) shall have a copy of the indictment (but not the names of the witnesses) delivered to them 5 days before trial. 7 W. c. 3.

Copy of the panel.

10. And they shall have copies of the panel of the jurors delivered to them, two days before trial. 7 W. c. 3.

Process for wit-

11. And shall have process of court to compel their witnesses to appear. 7 W. c. 3.

List of the witnesses. 12. And moreover, after the death of the person pretending to be king of England by the name of James the third, when a person is indicted for high treason, or misprision of treason, both a copy of the indictment, and lists of the jurors, and also of the witnesses, shall be delivered to the party indicted, ten days before the trial. 7 An. c. 21. f. 11.

Counfel.

13. And such persons shall have two such counsel as they shall defire assigned them by the court, who shall have access to them at reasonable times. 7 W. c. 3.

Likewise persons impeached by the house of commons, of high treason whereby corruption of blood shall be made, shall be admitted to make their sull desence by two counsel, who shall be assigned for that purpose, in like manner as upon indictments and other prosecutions. 20 G. 2. c. 30.

Witnesses sworn.

14. And they shall be allowed to make their defence by with

nesses on oath. 7 W. c. 3.

Two witnesses.

15. And they shall not be attainted but on the oath of two witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason; unless they shall confess, or stand mute, or resule to plead, or challenge peremptorily above 35 of the jury. 7 W. c. 3.

Judgment.

16. The judgment for high treason (not relating to the coin) is, That he shall be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure. 2 Haw. 443.

The judgment of a woman for high treason, is to be drawn

and burnt. 3 Inft. 211.

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17. In the faid judgment is implied forfeiture of lands and Forfeiture. goods to the king, loss of dower, and corruption of blood.

3 Inft. 211.

But after the death of the pretender (and of his eldest and every other son, 17 G. 2. c. 39. s. 3.) no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender during his life. 7 An. c. 21. f. 10.

#### Petit treason.

1. Moreover, there is another manner of treason, when a fer-Petit treason, vant flayeth bis master, or a wife her husband; or when a man secular or religious slayeth his prelate, to whom he oweth faith and chedience. 25 Ed. 3. ft. 5. c. 2.

High treason is against the king, petit treason against the sub-

jects. 3 Infl. 20.
2. No person shall be convicted of petit treason, but on the Two witnesses.

oath of two witnesses, or confession. 1 Ed. 6. c. 12. f. 22.

3. The judgment against a man for petit treason is, that he Judgment. shall be drawn to the place of execution, and there hanged by the neck till he be dead: The judgment against a woman is, that she shall be drawn to the place of execution, and there burnt. 2 Haw. 444.

4. The consequence of attainder, is, forfeiture of lands (to the Forfeiture. lord of the fee), and of goods; loss of dower; and corruption of

blood. 2 Haw. c. 49.

5. Altho' there can be no accessaries in high treason, yet in Accessary. petit treason there may be accessaries both before and after.

3 Inft. 21.

And accessaries before the fact are ousled of clergy, by several statutes; but accessaries after the fact have their clergy in all cases of petit treason, for no statute takes it from them. 2 H. H. 342.

#### Misprision of treason.

1. Milprision cometh of the French word mespris, which pro. Misprision, what perly fignifieth neglect or contempt: And misprission of treason, in legal understanding, fignifieth, when one knoweth of any treason, tho' no party or consenter to it, yet conceals it, and doth not reveal it in convenient time. 3 Inft. 36. 1 H. H. 371.

2. The judgment of misprission of treason is, to be imprisoned Judgment. during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 Inft. 36.

3. Every man therefore that knoweth a treason, ought with all Caution. speed to reveal it to the king, his privy council, or other magi-

ftrate. H. Pl. 127.

4. But it feemeth that misprission of petit treason is not subject Misprisson of to the judgment of misprision of high treason, but only is punish- petit treason. able by fine and imprisonment, as in the case of misprision of felony. 1 H. H. 375.

Treasure

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### Treasure found.

Treasure trove, what.

1. TREASURE trove, or treasure found, is where any gold or filver, in coin, plate, or bullion, bath been of ancient time bidden, wherefoever it be found, whereof no person can prove any property, it doth belong to the king, or to some other by the king's grant, or prescription. 3 Inst. 132.

Gold or filver] For if it be of any other metal, it is no treafure; and if it be no treasure, it belongs not to the king, for it must be treasure trove. 3 Inst. 132.

Where foever it be found] Whether it be of ancient time hidden in the ground, or in the roof or walls, or other part of a castle, house, building, ruins, or elsewhere, so as the owner cannot be known. 3 Inft. 132.

Belong to the king The reason whereof is a rule of the common law, that such goods whereof no person can claim any property, belong to the king; as wrecks, strays, and the like. 3 Inst. 132.

Taking treasure trove, not felony.

But finable.

2. Larceny cannot be committed of such things whereof no man hath any determinate property, tho' the things themselves are capable of property, as of treasure trove, or wreck till seized; tho' he that hath them in point of franchise, may have a special action against him that takes them. 1 H. H. 510.

3. The punishment for concealment of treasure trove, is by

fine and imprisonment. 3 Inft. 133.

4. And it belongeth to the coroner to inquire thereof. 3 Infl.

The coroner may inquire thereof. 133

Concerning which it is enacted by the 4 Ed. 1. st. 2. that a coroner, being certified by the king's bailiffs, or other bonest men of the country, shall go to the places where treasure is said to be found. And it is farther enacted in the same statute, that the coroner ought to inquire of treasure that is found, who were the sinders, and likewise who is suspected thereof; and that may be well perceived, where one liveth riotously, haunting taverns, and hath done so of long time; hereupon he may be attached for this suspicion, by 4, or 6, or more pledges, if he may be found.

Also the sheriff in his torn.

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5. Also it seems to be agreed, that all seizures of treasure trove, belonging to the king, may be inquired of in the sherist's torn: But it seems questionable, whether a prescription in a court leet to inquire of such seizure belonging to the lord of it, being a subject, be good or not, since it is against the general rule of the law, for the leet to take cognizance of trespasses done to the private damage of the lord, because that would make him his own judge. 2 Haw. 67.

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## Treasurer.

HE treasurers shall be persons resident in the county or Treasurer how division, and shall be appointed by the justices at their chosen. general or quarter sessions; first giving sufficient security to be accountable for the money which shall be paid to them in pursuance of this act (for the levying of county rates), and to pay such sums as shall be ordered by the justices in sessions, and for the due and saithful execution of the trusts reposed in them. 12 G. 2. c. 29.

2. And they may continue the treasurer from time to time in Continuance in his office, and remove him at their pleasure, and appoint another his office; and in his place; and may allow him a falary not exceeding 201 his salary. a year, to be paid out of the county rates. 12 G. 2. c. 29.

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3. And that the treasurers may be the better amenable to the His election to court of king's bench, with regard to the payment of the money for relief of the prisoners of the King's Bench and Marshalsea prisons, Every person who shall be elected treasurer of any county, shall in 30 days after his election transmit his name and place of abode to the clerk of the crown in the court of king's bench, to be by him entred or registred, for which entry no see shall be taken: And if such treasurer shall neglect or resuse so to do, then upon the report of the said clerk of the crown, the said court may make a rule upon him, requiring his performance; which shall be inforced as other rules of the said court, at the charge of such treasurer. 11 G. 2. c. 20.

4. And the treasurer shall keep books of entries of the several His account. Sums by him received and paid; and shall deliver in a true and exact account upon oath if required of his receipts and disbursements, distinguishing the particular uses to which the several sums have been applied, to the justices at every general or quarter seffions, and shall lay before them the proper vouchers for the same:

Which accounts and vouchers, shall be deposited with the clerk of the peace, to be kept amongst the records, to be inspected by any

of the justices without fee. 12 G. 2. c. 29. f. 7, 8.

5. And the discharge of the justices, by their order at their And discharge general or quarter sessions, shall be a sufficient release and discharge to such treasurer. 12 G. 2. c. 29. s. 9.

Crees. See Wood.

Trespals. See Justice of the peace. Trial. See Jury, Sessions. Trophy money. See Pilitia.

# Turnips.

If any person shall steal and take away, or maliciously pull up and destroy any turnips growing, or being in any grounds belonging to any person, and be convicted thereof (within 30 days) by confession, or oath of one witness, before one justice; he shall for the first offence pay to the owner such satisfaction for the damage, and within such time, as the justice shall appoint; and shall also pay down, upon conviction, to the overseers for the use of the poor, such sum not exceeding 10 s. as the justice shall think sit; and if he shall not make such recompence and payment, the justice may either commit him to the house of correction for any time not exceeding one month, or order him to be whipt by the constable: And being convicted of a second offence, he shall be committed to the house of correction for 3 months.

Turnpikes. See Pighways.

# Magrants.

HIS title consider the chiefly of the statute of the 17 G. z. c. 5. commonly called the vagrant act; but in the progress thereof, the other statutes relating to vagrants are inserted in the places where they properly fall in.

I. Idle and disorderly persons.

II. Rogues and vagabonds.

III. Incorrigible roques.

IV. Apprehending.

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V. Reward for apprehending.

VI. Penalty for not apprehending.

VII. Privy fearch.

VIII. Examination.

IX. Whipping or imprisonment.

X. Further punishment.

XI. Conveying.

XII. What to be done with at the place to which they are fent.

XIII. Scottish vagrants.

XIV. Irish vagrants.

XV. Lunatick vagrants.

XVI. Penalty of lodging vagrants.

XVII. Children born in vagrancy.

XVIII. General penalty for hindring the execution of the vagrant act.

XIX. Charges of maintaining and conveying vagrants.

XX. Appeal.

XXI. Treble cofts.

XXII. Exception of special franchises.

#### I. Idle and disorderly persons.

By the 7 J. c. 4. Idle and disorderly persons shall be sent to the house of correction; and by the 17 G. 2. c. 5. idle and disorderly persons are thus described: (1) All persons who threaten to run away, and leave their wives or children to the parish. (2) All persons who shall unlawfully return to the parish or place

# Magrants.

from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong. (3) All persons who not having wherewith to maintain themselves, live idle without employment, and refule to work for the usual and common wages given to other labourers in the like work, in the parishes or places where they are, (4) All persons going about from door to door, or placing them. felves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell--All these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (being thereof convicted before him, by his own view, or confession, or oath of one witness) to the house of correction, to be kept to hard labour not exceeding one month. And any person may apprehend, and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways, or passages to beg alms in the parishes or places where they dwell; and if they shall resist. or escape from the person apprehending them, they shall be punished as rogues and vagabonds. And the said justice, by war. rant under his hand and feal, may order (A) any overfeer where fuch offender shall be apprehended, to pay 5 s. to any person in fuch parish or place so apprehending them, for every offender so apprehended; to be allowed in his accounts, on producing the justice's order, and the person's receipt to whom it was paid: And if the overfeer shall neglect or refuse to pay the same, the said juflice on oath thereof, may by his warrant order the same to be levied by diffress und sale of his goods, and in such case he shall not be allowed the same in his accounts. f. 1.

Note; This is another, and a quite different reward, from that which is given hereafter for apprehending rogues and vagabonds; the latter being 10 s. and this but 5 s. the latter paid by the county, but this paid by the parish, as a punishment for suffering their poor to beg, altho' within their own parish; for if they beg out of their parish, they incur a further degree of guilt, becoming thereby rogues and vagabonds.

### II. Rogues and vagabonds.

An infant under the age of 7 years, shall not be said to be a rogue and vagabond; but shall be removed to its place of settlement, as other poor persons not vagrants. Black. 276.

But persons who shall be deemed rogues and vagabonds, are by

the 17 G. 2. c. 5. these that follow:

(1) All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty.

(2) Persons going about as collectors for prisons, gaols, or hospitals.

(3) Fencers. (4) Bearwards.

(5.) Common players of interludes, and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, co-

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(6) Minstrels.

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But this shall not prejudice the heirs or assigns of John Dutton of Dutton, late of the county of Chester, esquire, their heirs or assigns, concerning the liberty, privilege, or inheritance, which they, their heirs or assigns now lawfully use, or ought to use within the county of Chester, by reason of any ancient charters of any kings of this land, or by reason of any prescription, or lawful usage, or title whatsoever.

And this exception is as ancient as the vagrant act of the 39 El.

(now repealed).

And in the 43 El. c. 9. which continued the faid act of the 39 El. the above clause was continued only for one year, except before the end of the said year, the said John Dutton, or his heirs, should procure the lords chief justices and lord chief baron, or two of them, on hearing his allegations and proofs, to make certificate into the chancery, to be there inrolled, that the said John Dutton, or his heirs, ought lawfully (if no statute against rogues or beggars had been made) by charter, tenure, or prescription, to have such liberty of licensing of minstrels, as he claimeth and useth.

And in the 1 J. c. 25. the same clause was continued without limitation; so that it is probable such proof had then been made

as is abovementioned.

And the history of the matter is this: Randal Blandeville, Earl of Chefter, was about the end of the reign of K. Rich. the first, fuddenly besieged by the Welfh, in the castle of Ruthelent in Flintfire; whereupon he presently sends to his constable of Cheshire, one Roger Lacy, to hasten, with what force he could, to his relief. It happened to be on Midsummer-day, and a great fair then held at Chifter. Whereupon Roger immediately got together a great lawless mob of fidlers, players, coblers, &c. and marches immediately towards the earl; and the Welsh perceiving a great multitude approaching, raifed the fiege and fled. The earl being thus freed, comes back with his constable to Chester; and in memory of this service, by a charter grants to Roger Lacy and his heirs, power over all the fidlers, letchers, whores, and shoemakers in Chester. About the latter end of the reign of King John, or beginning of K. Hen. 3. Roger Lacy being dead, his son John by deed, granted to one Hugh Dutton his steward, and to his heirs, the rule and authority over all the letchers and whores in all Cheshire, in these words; Sciant præsentes & futuri, quod ego Johannes Constabularius Cestriæ, dedi & concessi, & hac præsenti charta mea confirmavi Hugoni de Dutton & hæredibus suis, magifratum omnium leccatorum & meretricum totius Cestriæ, sie ut liberius illum magistratum teneo de comite, salvo jure meo mihi & bæredibus meis. Under which grant by ancient custom, the heirs of Dutton claim and enjoy a privilege and authority over all the common fidlers and minstrels in Chefter, and in all Cheshire to this day, and in memory thereof, keep a yearly court at Chefter on Midfummer day, being Chefter fair, and in a solemn manner ride attended

# Magrants.

attended thro' the city to St. John Baptiff's church, with all the fidlers of the county playing before the lord of Dutton, and then at the court renew their licences yearly; and none ought to use the trade or employment of a minstrel or fidler, either within the city or county, but by an order and licence of that court, Sb. 360.

(7) Jugglers.

(8) All persons pretending to be gypsies, or wandring in the

habit or form of Egyptians.

And by the 1 & 2 P. & M. c. 4. If any person shall bring into the realm any persons calling themselves, or commonly called Egyptians; he shall forfeit 40 l. half to the king, and half to him that shall sue. And if any of the said persons called Egyptians, so brought into the realm, shall continue within the same for one month, he shall (on conviction in the county where he was apprehended) be adjudged guilty of selony without benefit of clergy, and shall not be tried by a jury per medicatem lingue. But this not to extend to any child not above 13 years of age; nor to charge any person as accessary to the said selony.

And by the 5 El. c. 20. Every person (tho' not brought from beyond sea) who shall be found in any company of vagabonds, commonly called, or calling themselves Egyptians, or counterseiting, transforming, or disguising themselves by their apparel, speech, or other behaviour like unto them, and shall continue in the same at one time, or at several times, by the space of one month, shall on conviction in the county where he was apprehended, be adjudged guilty of selony without benefit of clergy, and shall not be tried by a jury per medietatem lingua. But this

not to extend to any child within 14 years of age.

(9) Or pretending to have skill in physiognomy, palmestry, or like crafty science, or to tell fortunes.

(10) Or using any subtil crast to deceive and impose on any

of his majelty's subjects.

(11) Or playing or betting at any unlawful games or plays.
(12) All persons who run away, and leave their wives or chil-

dren, whereby they become chargeable to any parish or place.

(13) All petty chapmen, and pedlars, wandring abroad, not

being duly licenfed, or otherwife authorized by law.

(14) All persons wandring abroad, and lodging in alchouses, barns, outhouses, or in the open air, not giving a good account of themselves.

(15) All persons wandring abroad and begging, pretending to

be foldiers, mariners, or feafaring men.

But this shall not extend to soldiers wanting subsistence, having lawful certificates from their officers, or the secretary at war; or to mariners or seafaring men licensed by some testimonial or writing under the hand and seal of some justice of the peace, setting down the time and place of their landing or discharge, and the place to which they are to pass, and the names of the chief towns or places thro' which they are to pass, and limiting the time of their passage, while they continue in the direct way to the place to which they are to pass, and during the time so limited.

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Which exception hath a reference to the flatute of the 39 El. 6.17. which is as follows:

All idle and wandring foldiers or mariners, or idle persons which shall be wandring as soldiers and mariners, shall settle themselves in some service, labour, or other lawful course of life, without wandring, or otherwise repair to the places where they were born, or to their dwelling places if they have any, and there remain, betaking themselves to some lawful trade or course of life; on pain to be reputed as selons, and to suffer as in case of selony without benefit of clergy. f. 2.

And every idle and wandring foldier or mariner, which coming from his captain from the seas, or from beyond the sea, shall not have a testimonial under the hand of a justice of the peace of or near the place where he landed, setting down therein the place and time when and where he landed, and the place of his dwelling or birth, unto which he is to pass, and a convenient time therein limited for his passage, or having such testimonial, shall wilfully exceed the time therein limited, above 14 days; and also as well every such idle and wandring soldier or mariner, as every other idle person wandring as soldier or mariner, which shall forge or counterfeit any such testimonial, or have with him any such testimonial forged or counterfeited, knowing the same to be counterfeited or forged; in all these cases, every such acts or acts to be

felony without benefit of clergy. f. 3.

And the justices of affize, and justices of the peace in sessions, may hear and determine all such offences, and execute the offenders convicted before them, as in cases of selony is accustomed; except some honest person valued at the last subsidy to 10% in goods, or 40% in lands, or else some honest freeholder, as by the said justices shall be allowed, will be contented before such justices to take such offender into his service for one whole year, and then before the said justices will be bound by recognizance of 10% if he keep not the said person for one whole year, and bring him to the next sessions for the peace and gaol delivery next ensuing after the said year; and if any such person retained depart within the year, without the licence of him that so retained him, he shall be guilty of selony without benefit of clergy. f. 4.

But if any such idle and wandring person shall fall sick by the way, so that by reason of his weakness he cannot travel to his journey's end within the time limited in his testimonial, he shall not be within the danger of this statute, so as he settle himself in some lawful course of life as aforesaid, to repair as aforesaid to the place where he was born or was last abiding, within convenient time after the recovery of his sickness, and there remain as aforesaid f. 5.

And if any fuch foldier or mariner coming from the seas, shall not at the time of his landing, or in his travel to the place whereunto he is to repair, going the direct way [have wherewithal to maintain himself in his journey], he may resort to some justice next adjoining to the place of landing or way, and make known unto him his poverty; who upon perfect notice thereof had, may license (B) him to pass the next and direct way to the place where

# Magrants.

where he is to repair, and to limit him so much time only, as shall be necessary for his travel thither; and in such case, pursuing the form of such licence, he may for his necessary relief in his travel, ask and take the relief that any person shall willingly give him. J. 7.

Note; the above words [have wherewithal to maintain himfelf in his journey] are inserted in order to make up the sense, the statute being evidently impersect without some such like words; and the parliament roll itself in this place is in like manner impersect: and yet this is the sole clause in any act of parliament, by which power is given to a justice of the peace to license any person to beg; and of which such evil use is often made by prosligate persons, in counterseiting such licences, and thereby abusing the country.

Lord Coke, upon this statute, speaking of the preventing of persons from wandring without passes, or with the same counterseited, observes thereupon, that this excellent work (as he calls it) of preventing them from wandring abroad without lawful licences, is without question feasible; for upon the making of the said statute, and a good space after, whilst the justices and other officers were diligent and industrious, there was not a rogue to be seen in any part of England; but when the justices and others became remiss, rogues swarmed again. 2 Inst. 729.

But, in truth, the great mischief seemeth to be, the suffering these persons to wander at all: Such persons, above all others, ought to be conveyed immediately from their place of landing or discharge, to their place of settlement, at the publick charge, for three reasons; 1. Because, if they be sailors, they may be useful at the ports where they belong. 2. Because otherwise, whether they be soldiers or sailors, they become initiated into the trade of begging, which they are never after willing to leave. 3. Because being for the most part able and lusty, they are most likely to do mischief in the country.

(16) Or pretending to go to work in harvest.

But this shall not extend to any person going abroad to work at any lawful work in the time of harvest, so as he carry with him a certificate signed by the minister and one of the churchwardens or overseers where he shall inhabit, declaring that he hath

a dwelling house or place there.

Which exception hath reference to a clause in the statute of the 13 & 14 C. 2. c. 12. concerning settlements, by which 40 days inhabitancy made a settlement; whereby it is enacted, that it shall be lawful for any person to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he carry with him a certificate from the minister of the parish, and one churchwarden and one overseer, that he hath a dwelling house or place in which he inhabiteth, and hath lest wise and children, or some of them there (or otherwise as the condition of such person requireth) and is declared an inhabitant there; and in such case, if he shall not return when his work is sinished, or shall fall sick or impotent, it shall not be accounted a settlement.

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(17) And all other persons, wandring abroad and begging thall be deemed rogues and vagabonds.

### III. Incorrigible rogues.

By the 17 G. 2. c. 5. Incorrigible rogues are thus described:

(1) All end gatherers offending against the statute of the 13 G.

being convicted of fuch offence.

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By which act of the 13 G. c. 23. f. 8. The offence is this; wix. The collecting, buying, receiving, or carrying any ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods; and the punishment of such persons is, in order to prevent their committing abuses, by such practices, in the woollen manufacture.

(2) All persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or resusing to go before a justice, or to be examined on oath before such justice, or resusing to be conveyed by such pass as is herein after directed, or knowingly giving a sale account of themselves on such examination, after warning given them of their punishment.

(3) All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act.

(4) All persons who after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences:—All these shall be deemed incorrigible rogues. J. 4.

#### 1V. Apprehending rogues.

If any person shall be found offending against this act, the constable shall apprehend him, and convey or cause him to be conveyed to a justice of the peace. 17 G. 2. c. 5 f. 5.

And any other person may apprehend him, and carry him to

the constable, or to a justice. id.

#### V. Reward for apprehending.

If any person, not being a constable, shall apprehend any such togue or vagabond, and shall deliver him to a constable, or convey him to a justice; or if any constable shall so apprehend and convey him, it shall be lawful for such justice to reward him, by making an order (C) under hand and feal, upon the high confable, to pay 10s. to the person so apprehending him, within one week after demand, and producing such order, and on his giving a receipt for the same; which shall be allowed by the treaturer to fuch high constable, on passing his accounts, and delivering such order and receipt, and also his own receipt for the same to such treasurer; the treasurer also to be allowed the same in his accounts, on producing the faid vouchers; and in towns corpotate, and other places, where there are no high constables, such petty constables shall pay or retain such reward, and be allowed the fame in their accounts, on producing the like vouchers. Vol. II.

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if any high constable, or where there is none, such petty constable; shall refuse or neglect to pay such reward on demand, such justice by his warrant may levy the sum of 20s. by distress and sale of his goods, and thereout allow the said reward, and such other recompence for his trouble, loss of time, and expences, as the said justice shall think sit; the overplus to be returned on demand. 17 G. 2. C. 5. f. 5.

### VI. Penalty for not apprehending.

If the constable shall refuse or neglect, to use his best endeawours, to apprehend or convey to some justice such offender; or if any other person, being charged by any justice so to do, shall refuse or neglect to use his best endeavours to apprehend and deliver to the constable, or to carry such offender before some justice, where no constable can be found; he shall, being convicted thereof on view, or oath of one witness, before one justice, forfeit 10s. to the poor, by distress. 17 G. 2. c. 5. f. 5.

#### VII. Privy fearch.

The justices, or two of them, shall four times a year at least, or oftner (if need be) meet in their respective divisions, and by their warrant (D) command the constables of every hundred, parish, town, and hamlet, who shall be affished with sufficient men, to make a general privy search in one night, for the apprehending of rogues and vagabonds; and every justice shall also, on receiving information that rogues and vagabonds are in any place within his jurisdiction, issue his warrant to the constable to search for and apprehend such rogues and vagabonds, and such as they shall sind upon such search, they shall cause to be brought before a justice.

justice. 17 G. 2. c. 5. s. 6.

And by the 25 G. 2. c. 36. Two justices, in case any person apprehended upon a general privy search, or by a special warrant, shall be charged before them with being a rogue and vagabond, or an idle and disorderly person, or with suspicion of felony (altho' no direct proof be then made thereof) may examine such perfon on oath, as to his fettlement, and means of livelihood; and the substance of such examination shall be put in writing, and figned by fuch person, and by the justices, and be transmitted to the next fessions to be filed; and if such person shall not shew, that he has a lawful way of getting his livelihood, or shall not procure some responsible housekeeper to appear to his character, and to give fecurity (if required) for his future appearance at some other day to be fixed for that purpose, the justices may commit him to some prison or house of correction, for any time not exceeding fix days; and in the mean time order the overfeers of the poor, to advertise in some publick paper, a description of his perfon, and any thing that shall be found on him, or in his custody, and which he shall be suspected not to have come honestly by, and the place of his commitment, and the time and place appointed for again cord

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for his re examination; and if no accusation shall be then said against him, he shall be discharged, or otherwise dealt with according to law. f. 12.

But by the shortness of the time limited for advertising him, this seems chiefly calculated for the places within the bills of

mortality.

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#### VIII. Examination.

Where any rogues or vagabonds, apprehended by any conflable, or such other person as aforesaid, shall be brought before a justice, he shall inform himself by the examination (E) upon oath of the person apprehended, or of any other person, of the condition and circumstances of the person so apprehended, and of the parish or place where he was last legally settled; the substance of which shall be put into writing, and be signed by the person or persons so examined; and the justice shall likewise sign the same, and transmit it to the next sessions, there to be filed and kept on record. 17 G. 2. c. 5. f. 7.

### IX. Whipping or imprisonment.

And such justice shall order such person so apprehended, to be publickly whipt (F) by the constable, petty constable, or some other person, to be appointed by such constable or petty constable, of the parish or place, where such person was apprehended; or shall order him to be sent to the house of correction (G) till the next sessions, or for any less time, as such justice shall think proper. 17 G. 2. c. 5. f. 7.

#### X. Further punishment.

And where any offender against this act shall be committed to the house of correction till the next sessions, and the justices at fuch fessions shall on examination of the circumstances of the case adjudge fuch person a rogue or vagabond, or an incorrigible rogue; they may order such rogue or vagabond to be detained in the house of correction, to hard labour for any further time not exceeding fix months, and fuch incorrigible rogue for any further term not exceeding two years, nor less than fix months; and during his confinement, to be whipped in such manner, and at such times and places, as they shall think fit; and such person may, if the fessions think convenient, afterwards be fent away by a pals; and if such person, being a male, is above the age of 12 years, the court may, before he is discharged from the house of correction, fend him to be employed in his majesty's service by lea or land; and if such incorrigible rogue, so ordered by the lethons to be detained in the house of correction, shall break out or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years. 17 G. 2. 6.5.1.9.

### Magrants.

And by the 13 5 14 C. z. c. 1z. The justices in sessions may transport such rogues, vagabonds, and sturdy beggars, as shall be

duly convicted, and adjudged to be incorrigible. f. 23.

And by the 17 G. 2. c. 5. If the child of any vagrant, above the age of seven years, shall be committed to the house of correction, the justices in sessions, if they see convenient, at any time before such child be discharged, may order such child to be placed out as a servant or apprentice, to any person who is willing to take such child, till such child shall be of the age of 21 years, or for a less time: And if any offender, who was sound wandring with such child, shall be again found with the same child which was so placed out, he shall be deemed an incorrigible rogue. f. 24.

And where any vagrants have been committed to the house of correction till the next sessions, if on examination of such persons no place can be found, to which they may be conveyed, the sessions shall order them to be detained and employed in the house of correction, until they can provide for themselves, or until the justices in sessions can place them in some lawful calling, as servants, apprentices, soldiers, mariners, or otherwise, either within

this realm, or in the plantations in America. f. 28.

#### XI. Conveying.

After such whipping or confinement, the justice may, if he thinks convenient, by a pass (H. I.) under hand and seal, cause him to be conveyed to the place of his last legal settlement; but if it cannot be found, then to the place of his birth; or if he be under the age of 14 years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden or overseer. 17 G. 2.

And the justice shall make a duplicate of the pass and examination, and sign the same; and shall afterwards transmit the duplicate of the pass, annexed to the examination, to the next sessions, there to be filed and kept on record; and shall annex the duplicate of the examination to the pass, and send it with the same; and the said pass, examination, and duplicate thereof, shall and may be read in any court of record as evidence. f. 8.

And the justice who shall make the pass, shall with the pass cause likewise to be delivered to the constable a note or certificate (K) ascertaining how they are to be conveyed, by horse, cart, or on foot, and what allowance such constable is to have for con-

veying them. f. 10.

And the constable who shall receive such pass and certificate, shall convey the person according to the direction of the pass, the next direct way to the place where he is ordered to be sent, if it be in the same county, riding, division, corporation, or franchise; if not, he shall deliver the said person to the constable of the first town, parish, or place, in the next county, riding, division, corporation, or franchise, in the direct way to the place whither he is to be conveyed, together with the pass and dupli-

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cate of the examination, taking his receipt for the same. And such constable shall without delay apply to some justice in the same county or division, who shall make the like certificate, and deliver it to such constable, who shall with all speed convey such person unto the first parish, town, or place in the next county or division, in the direct way to the place to which he is to be conveyed. And so from one county or division to another, till they come to the place to which such person is sent. And the constable, who shall deliver such person to the churchwarden or other person ordered to receive him, shall at the same time deliver the said pass, with the duplicate of the examination, taking their receipt for the same. I. II.

And any justice before whom a vagrant shall be carried, may order him to be searched, and his bundles to be inspected by the constable or other officer in his presence; and if it shall appear that such vagrant shall be found to have sufficient wherewithal to pay for his passage, either in whole or in part, the justice shall order so much of the money to be paid, or other effects sound upon such vagrant to be fold, and employed towards the expence of taking up and passing such vagrant, returning the overplus,

after deducting the charges of fuch fale. f. 12.

And the justices in fessions shall limit what rates and allowances, by the mile, or otherwise, shall be made, for conveying or maintaining rogues, vagabonds, or incorrigible rogues; and make such other orders for the more regular proceeding therein, as they shall

think proper. s. 16.

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And if any petty constable shall bring to any high constable such certificate as aforesaid, together with a receipt or note from the constable to whom the person was delivered, the said high constable shall pay the rates ascertained by such certificate, taking the petty constable's receipt; the high constable to be allowed the same by the treasurer on passing his accounts, on his delivering up such certificate and receipt, and giving his own receipt for the fame to fuch treasurer; the same to be allowed the treasurer in his accounts, on his delivering up the vouchers aforesaid. if the high constable shall refuse or neglect to pay the same on demand, it shall be lawful for one justice, by his warrant, to levy double the fum by diffress, and thereout to allow the petty constable the fum ascertained by the certificate, and such other recompence for his trouble, loss of time, and expences, as the justice shall think fit; the overplus to be returned to the high constable on And in cities, towns corporate, and other places where there is no high constable, the petty constable shall be allowed what he shall so pay pursuant to such certificate, in his accounts, on delivering up such vouchers: Or if any master of a house of correction shall deliver such certificate and receipt to the treasurer, the treasurer shall pay the same to him, taking his receipt for the lame, and be allowed the same in his accounts, on delivering up such vouchers.

And by the 26 G. 2. c. 34. Where the high constable hath not money in his hands sufficient to answer the said expences, the treasurer shall pay the same to such petry constable, on his

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producing the certificate, and such other vouchers as aforesaid.

And if any petty constable, or governor of any house of correction, shall counterfeit any such certificate or receipt, or knowingly permit any alteration to be made therein; he shall forseit 50%. And if he shall not convey, or cause to be conveyed, such vagrants, or not deliver them to the proper person; or if any constable shall result to receive any such person, or to give such receipt, he shall forseit 20% by distress and sale by warrant of the justices in sessions, where the offence shall be committed; half to the informer, and half to the treasurer, to be applied by him as part of the publick stock; returning the overplus upon demand, charges of distress being first satisfied. 17 G. 2. c. 5. f. 18.

# XII. What to be done with at the place to which he is sent.

The parish or place to which any rogue, vagabond, or incorrigible rogue shall be conveyed, shall employ in work, or place in some workhouse or almshouse, the person so conveyed, until he shall betake himself to some service or other employment: And is he shall refuse to work, or not betake himself to some service or other employment, the overseers may cause him to be carried to some justice, to be sent to the house of correction, there to be kept to hard labour. 17 G. 2. c. 5. f. 19.

But if the churchwarden or other person who shall receive any person so sent, shall think the examination to be false, he may carry the person so sent before a justice, who if he see cause, may commit such person to the house of correction till the next sessions; and the justices there, if they see cause, may deal with such person as an incorrigible rogue: But the person so sent, shall not be removed from the place to which sent, but by order of two justices, in the same manner as other poor persons are removed to the place of their settlement. S. 11.

### XIII. Scottish vagrants. (L.)

The constable of any parish or place, within the counties of Cumberland, Northumberland, Durham, or town of Berwick, shall on any person being so delivered to him by a pass and examination, whose place of legal settlement is in Scotland, deliver the examination to the clerk of the peace, to be kept amongst the records; and convey such person with the pass, into the next adjoining shire, stewartry, or place, in that part of the united kingdom, and deliver him to some constable or other officer of the next parish, district, or place within the said shire, stewartry, or place, taking his receipt for him; and such officer shall receive such person, and give such receipt, and dispose of him according to law. And if any such vagrant, after being so conveyed into Scotland, shall be found wandring, begging, or misbehaving himself in England, he shall be deemed an incorrigible rogue. 17 G. 2.

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Every master of a vessel bound for Ireland, the Isles of Man, Jersey, Guernsey, or Scilly, shall on warrant to him directed, under the hand and feal of a justice of the place where such vessel shall lie (N.), take on board such vagrant as shall be expressed in the warrant, and convey him to fuch place; and for the charges thereof, the constable who serves him with the warrant, shall pay him such rate by the head, as the justices in sessions shall appoint; and fuch matter shall on the back of the warrant fign a receipt for the money so paid, and also for the vagrant so deli-Which warrant fo indorfed shall be produced to the justice who figned and fealed the fame, and upon his allowance thereof. under his hand, the money so paid shall be repaid by the county, as other money for conveying vagrants. And such master neglecting or refusing to transport such vagrants, or to indorse such receipt, shall forfeit 5 1. to the poor of the parish or place where the offence shall be committed, to be levied by distress and fale of the ship, or any goods within the same, by warrant of one justice, returning the overplus on demand, after the penalty and charges of the same are satisfied. 17 G. 2. c. 5. f. 14.

But no mafter shall be compelled to take on board more than one vagrant, for every 20 tons burden. f. 15.

#### XV. Lunatick vagrants.

Whereas there are fometimes perfons, who by lunacy or otherwife, are furiously mad, or so far disordered in their senses, that they may be dangerous to be permitted to go abroad, it shall be lawful for two justices where such person shall be found, by their warrant (O.) directed to the constables, churchwardens, and overfeers, or some of them, to cause such person to be apprehended, and kept fafely locked up in some fecure place within the county, or precinct, as fuch juffices shall appoint; and, if such juffices and it necessary, to be there chained, if the settlement of such person be within such county or precinct; and if not, then to be fent to the place of his last legal settlement by a pass, mutatis mutandis, and shall be locked up or chained, by warrant of two juffices of the place to which he is fent: And the reasonable charges of removing, and of keeping, maintaining and curing fuch perion, during fuch restraint (which shall be during fuch time only as fuch lunacy or madness shall continue) shall be paid, such charges being first proved upon oath, by order of two justices (P.) directing the churchwardens or overfeers where any goods, chattels, lands, or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive fo much of the annual rents of the lands and tenements, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next sessions: But if such person hath not an estate to pay the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place, to M m 4

# Clagrants.

which fuch person belongs, by order of two justices, directed to the churchwardens and overseers for that purpose. 17 G. 2. c. 5. s. 20.

But this shall not extend to restrain the king's prerogative, or power of the lord chancellor, or the chancellor of the county palatine of Lancoster, or the chamberlain of the county palatine of Chester, concerning such lunaticks; or to restrain or prevent any friend or relation of such lunaticks, from taking them under their own care and protection. f. 21.

### XVI. Penalty of lodging vagrants.

If any person shall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his house, barn, or other outhouse or building, and shall not apprehend and carry him before a justice, or give notice to the constable so to do; and shall be convicted thereof by consession, or oath of one witness, before one justice; he shall forseit not exceeding 40 s. nor less than 10 s. half to the informer, and half to the poor, by distress and sale. And if any charge shall be brought on any parish or place, by means of such offence, the same shall be answered to the said parish or place by such offender, and be levied by distress and sale of his goods as aforesaid; and if sufficient distress cannot be found, such offender shall be committed to the house of correction by the justice, for any time not exceeding one month. 17 G. 2. 6.5.

#### XVII. Children born in vagrancy.

Whereas women wandring and begging are often delivered of children, in parishes and places to which they do not belong, whereby they become chargeable to the same, it is enacted, that where any fuch woman shall be so delivered, and become chargeable, the churchwardens or overfeers may detain such woman in their custody, until they can safely convey her to a justice; who shall examine her, and commit her to the house of correction until the next fessions, who may, if they see convenient, order her to be publickly whipped, and detained in the house of correction for any further time not exceeding fix months. And upon application by the churchwardens and overfeers of the place where the was so delivered, the justices at such sessions shall order the treafurer to pay them such a sum, as shall be adjudged a reasonable fatisfaction for the charges such place has been put to on such woman's account. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be fent thither for want of other settlement, by a pass, by virtue of this act; but the fettlement of fuch woman shall be deemed the settlement of such child. 17 G. 2. c. 5. s. 25.

And that it may appear, that the overfeers have done what was incumbent upon them, in order to avoid such settlement, it is requisite for the justice (as he ought to do in all other cases wherein

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he acteth as judge) to make a record (Q.) of the whole proceedings before him; which record (as it feemeth) will be the proper evidence in such case, if the settlement shall afterwards be contested.

#### XVIII. General penalty for bindring the execution of the vagrant act.

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty, in any case for which no punishment is herein before particularly provided; or if any person shall hinder the execution of this act; or shall rescue any person apprehended or passing from place to place by virtue thereof; or shall be advising, aiding, or assisting to his escape; and shall be thereof convicted, on oath of one witness, before one juflice, he shall forfeit not exceeding 5 1. nor under 10 s. to the poor, by diffress; and if sufficient diffress cannot be found, to be committed to the house of correction, to be kept to hard labour, not exceeding two months. 17 G. 2. c. 5. f. 22.

## XIX. Charges of maintaining and conveying vagrants.

To defray the expences of apprehending, conveying, and maintaining rogues, vagabonds, and incorrigible rogues, and defraying all other expences necessary for the execution of this act, not herein before provided for, the justices in fessions may cause such sums as shall be necessary, to be raised in the same manner as the general county rate. 17 G. 2. c. 5. s. 33.

## XX. Appeal.

Any person aggrieved by any act of any justice out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter festions of the county, riding, liberty, or divifion, giving reasonable notice thereof; whose order thereupon shall be final. 17 G. 2. c. 5. f. 26.

#### XXI. Treble costs.

Persons sued for any thing done in the execution of this act. may plead the general iffue; and if they recover, shall have treble costs. 17 G. 2. c. 5. f. 34.

#### XXII. Exception of special franchises.

In all cities and towns, where by virtue of special acts of parliament, the charge of passing vagrants is to be defrayed in other manner than is by this act directed; or where such vagrants, by virtue of special statutes, are to be apprehended and conveyed by any person or officer, other than those named in this act, the same shall not be altered hereby: And persons conveyed in London,

# Magrants.

shall not be delivered in any other precinct within the city, but in the next county. 17 G. 2. c. 5. f. 27.

A. Order upon the overfeer to pay 5s. for apprehending a person begging in his own parish.

Westmorland. { To the overfeers of the poor of the parish of in the faid county.

WHEREAS it duly appears unto me John Moore, esquire, one of his majesty's justices of the peace in and for the said county, that A.O. of —— in the parish of —— in the faid county, an idle and disorderly person, did on the —— day of go about from door to door [or, place himself in the streets, highways, and passages] in the said parish, to beg and gather alms there; and was then and there apprehended in the said parish of —— by A.A. an inhabitant of the said parish, and was by him brought before me in order to be dealt withal according to law: I do hereby order you, or some, or one of you, to pay unto the said A.A. the sum of 5 s. on demand, as a reward for apprehending the said A.O. he producing and delivering to you this order, and giving to you a receipt for the said sum. Given under my band and seal, at Grimeshill in the said county, the —— day of —— in the —— year of the reign of —— day of —— in the —— year of the

B. Mariner's licence to pass unapprehended.

Westmorland. { To all constables and others whom it may concern.

HEREAS it appeareth unto me George Stephenson, esquire, one of his majesty's justices of the peace for the said county, that A. M. mariner, did on the —— day of —— land at —— in the said county, and that he hath nothing wherewithal to relieve himself, and that his lawful place of abode is at —— I do hereby license him to pass in —— days time, through the towns of —— and —— in the direct way to —— aforesaid; and to ask and take such relief in his travel in such direct way as aforesaid as any person shall willingly give him. Given under my hand and seal, at Warcopp in the said county, the —— day of —— in the year of our lord ——

C. Order for payment of 10 s. for apprehending a vagrant.

Westmorland. { To the high constable of -

WHEREAS it duly appeareth unto me John Thomson, esquire, one of his majesty's justices of the peace for the said county, that A. R. a rogue and wagabond, was found wandring and begging [or, as the case shall be] in the parish of \_\_\_\_\_ in the said county; which said A. R. was this day brought before me by A. I.

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of \_\_\_\_\_\_ yeoman, in order to be dealt withal according to law: I do hereby order you to pay unto the said A. I. as a reward for apprehending and bringing before me the said rogue and wagabond, the sum of 10s. within one week after demand thereof made, upon his producing and delivering to you this order, and giving unto you his receipt for the said sum. Given under my hand and seal, at Brough in the said county, the \_\_\_\_\_ day of \_\_\_\_\_

#### D. Warrant for privy fearch.

Westmorland { To the high constable of Lonsdale Ward within the faid county.

A T a meeting of the justices of our lord the king assigned to keep the peace within the said county, held at \_\_\_\_\_ for the divifion of Lonsdale Ward aforesaid, this \_\_\_\_\_ day of \_\_\_\_ in the
year of the reign of \_\_\_\_ by us \_\_\_\_ esquires, two of the said justices, assembled at the said meeting, being resident, living, and dwelling within the said division:

We do bereby command you forthwith to iffue your warrants to all the petty conflables within your faid Ward, for the making of a general privy fearch for rogues and vagabonds, according to the form bereon indorfed. Given under our hands and feals at \_\_\_\_\_\_ aforefaid in the county aforefaid, the day and year aforefaid.

## The form of the faid high constable's warrant.

Westmorland, Lonsdale Ward To the constable of

By virtue of a precept from his majefty's justices of the peace for the faid county, acting in and for the said Ward, at their special meeting for that purpose assembled, you are hereby required in his said majesty's name, commanding and taking to your assistance sufficient men within your constablewick (who are hereby required to assist you accordingly), to make a general privy search, in the night of the day of throughout your said constablewick, for the sinding and apprehending of rogues and wagabonds: And such as you shall so find upon such search, you are to carry forthwith before some of his said majesty's justices of the peace for the said county, to be dealt withal according to law. Herein sail you not. Given under my hand the day of in see year of our lord Edward Cooke, high constable.

#### E. Examination of a vagrant.

Westmortand. THE examination of A.O. a roque and wagabond, taken on oath before me—one of his majesty's justices of the peace in and for the said county, the day of—in the—year of the reign of—

# Magrants.

Who on his oath faith, That he was born at \_\_\_\_ [and fo trace out the history of his life, fo far forth as to ascertain his legal place of fettlement.]

A. O.

Taken and figned the day and year above written, before me the abovesaid

his mark.

F. Warrant to the constable for whipping a vagrant.

Westmorland { To the constable of

FOR ASMUCH as A. O. a rogue and vagabond, was this day found wandring and begging, in the parish of \_\_\_\_\_\_\_\_in the said county, not having obtained any legal settlement there, and was thereupon apprehended, and is now brought before me Hugh Robinson, clerk, one of the justices of our lord the king, assigned to keep the peace within the said county, that he may be punished and dealt withal according to law: These are therefore to command you to strip, or cause to be stripped, the said A. O. naked from the middle upwards, and to whip him or cause him to be publickly whipped at the common whipping post in your said parish; and asterwards to remove and convey the said A. O. according to the directions of the pass herewith delivered to you. Given under my hand and seal, at Lowther in the said county, the \_\_\_\_\_\_\_day of \_\_\_\_\_\_ in the \_\_\_\_\_\_\_

G. Commitment of a vagrant to the house of correction.

Westmorland. To the constable of —— in the said county, and to the keeper of the house of correction at —— in the said county.

ORASMUCH as A. O. a rogue and wagabond, was this day found wandring and begging in the parish of the faid county, not baving obtained any legal fettlement there, and was thereupon apprehended, and is now brought before me Richard Burn, clerk, one of the justices of our lord the king, assigned to keep the peace within the said county, that he may be punished and dealt withal according to law: These are therefore to command you the said constable, to carry the faid A. O. to the faid house of correction, and deliver him to the faid keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive the said A.O. into your custody in the said house of correction, and him there safely to keep until the next general quarter sessions of the peace to be holden for the faid county: And have you him then there, together with this precept. Given under my hand and feal at Orton in the faid - in the county, the --day of --year of the reign H.

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## H. Vagrant pass within the same jurisdiction.

Westmorland To the constable of —— in the said county, to receive and convey; and to the churchwardens, chapelwardens, or overseers of the poor of the parish of —— in the said county, or either of them, to receive and obey.

WHEREAS A.O. was apprehended within the constablewick of — aforefaid, in the county aforefaid, as a
rogue and vagabond, videlicet, — and upon examination of
the faid A.O. taken before me J. P. esquire, one of his majesty's
justices of the peace in and for the faid county (which examination is
hereur to annexed) it doth appear, that — These are therefore to require you the said constable to convey the said A.O. in the
next direct way to the said parish of — within the said county,
and there to defiver him to some churchwarden, chapelwarden, or
overseer of the poor of the same parish of — to be there provided
for according to law. And you the said churchwardens, chapelwardens, and overseers of the poor, are hereby required to receive the
said person, and provide for him as aforesaid. Given under my hand
and seal the — day of — in the year of our lord—

#### I. Vagrant pass from county to county.

Westmorland

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WHEREAS A. O. was apprehended in the township of aforesaid in the county of W. aforesaid, as a rogue and vagabond, videlicet, - and upon examination of the faid A. O. taken before me J. P. esquire, one of his majesty's justices of the peace in and for the said county of W. upon oath (which examination is bereunto annexed) it doth appear, that - These are therefore to require you the faid constable to convey the faid A. O. to the town of - in the county of - that being the first town in the next precinct through which he ought to pass in the direct way to the said parish of \_\_\_\_ in the country of \_\_\_\_ to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinet, together with this pass, and the duplicate of the examination of the faid A. O. taking his receipt for the same. And the faid A. O. is to be thence conveyed on in like manner to the fuid parish of \_\_\_\_ in the county of \_\_\_\_ there to be delivered to some of the churchwardens or overseers of the poor of the same parish of --- to be there provided for according to law. And you the said churchwardens, chapelwardens, and overseers of the poor are

# Clagrants.

bereby required to receive the faid person, and provide for him as aforesaid. Given under my hand and seal the day of in the year of our lord —

K. The certificate, according to the directions of the statute, shall be in the form, or to the effect following;

HEREAS by a pass (reciting the substance or effect of the said pass) I (or we) do bereby order and direct the said person (or persons) to be conveyed on soot (or, in a cart, or by borse, &c.) to the said town, (or parish) of \_\_\_\_\_\_ in \_\_\_\_ (or other place, describing it) in the way to such parish (town, or place, as the case shall be) in \_\_\_\_\_ days time; for which the said constable (&c.) is to be allowed the sum of \_\_\_\_\_ and no more. Given under my band (or our bands) this \_\_\_\_\_ day, &c.

## L. Vagrant pass to Scotland.

Westmorland. To the constable of —— in the said county of W. and also to all constables and other officers whom it may concern, to receive and convey; and to all constables and other officers within that part of Great Britain called Scotland, whom it may concern, to receive and obey.

WHEREAS A.O. was apprehended in the town of aforesaid in the county of W. aforesaid, as a roque and vagabond, videlicet, - and upon examination of the faid A. O. taken before me J. P. esquire, one of his majesty's justices of the peace in and for the faid county of W. upon oath (which examination is bereunto annexed) it doth appear, that his lawful place of settlement is in that part of Great Britain called Scotland: These are therefore to require you the said constable of - aforesaid in the county of W. aforesaid, to convey the said A.O. to the town of in the county of - that being the first town in the next precinct through which he aught to pefs in the direct way to that part of Great Britain called Scotland aforesaid, to which be is to be fent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass, and the duplicate of the examination of the faid A. O. taking his receipt for the same. And the said A.O. is to be thence conveyed on in like manner into the next adjoining shire, slewartry, or place, in that part of Great Britain called Scotland aforesaid, and is there to be delivered to some constable or other officer of the next parish, district, or place within such next adjoining shire, stewartry or place aforesaid, taking his receipt for the same. And such next officer in that part of Great Britain called Scotland aforefaid, is bereby required to receive the said A.O. and give such receipt as aforesaid, and to dispose of him the said A.O. according to luw. Given under my band and feal this - day of - in the year of our lord -M. Vagrant Wel

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Westmorland. To the constable of \_\_\_\_\_ in the said county; and also to all constables and other officers whom it may concern, to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

WHEREAS A.O. was apprehended in the town of in the faid county as a rogue and vagabond, videlicet, - and upon examination of the said A.O. taken before me J. P. esquire, one of his majesty's justices of the peace in and for the faid county upon oath (which examination is bereunto annexed) it doth appear, that the lawful settlement of him the said A.O. is in the kingdom of Ireland: These are therefore to require you the said - to convey the faid A. O. to the town of constable of in the county of - that being the first town in the next precinct through which he ought to pass, in the direct way to the said kingdom of Ireland, to which he is to be fent, and to deliver him to the constable or other officer of fuch first town in such next precinct, together with this pass and the duplicate of the examination of the faid A. O. taking his receipt for the same. And the faid A. O. is to be thence conveyed on in like manner, until be shall arrive in the country of -, and the constable or other officer to whom be shall be delivered in the faid county of - is hereby required to apply to some justice of the peace in and for the said county offor a warrant to the master of any ship or vessel bound for the said kingdom of Ireland, that shall lie in the said county of take on board the faid ship or wessel him the said A. O. and convey him to such place in the said kingdom of Ireland, as such ship or vessel shall be bound unto. Given under my hand and feal the-- in the year of our lord -

# N. Warrant to a master of a ship to export a vagrant.

Westmorland

J. P. esquire, one of the justices of our lord the king, affigned to keep the peace within the said county, To A. M. master of the ship called the \_\_\_\_\_ of \_\_\_ now lying or being at \_\_\_\_ and bound for \_\_\_\_ in the kingdom of Ireland, fendeth greeting.

THESE are in the name of our faid lord the king to require you to take on board the faid ship, A. O. and B. O. wagrants, both of them being natives of the kingdom of Ireland aforesaid, and having no settlement in England, and them to convey to aforesaid, in the kingdom of Ireland aforesaid, or to such other place in that kingdom as you shall arrive at; and for the charges thereof you shall take, and A. C. constable of at the

# Magrants.

the time he shall serve you with this warrant, shall pay, and is hereby required to pay unto you the sum of — in the whole, that is, at the rate of — bead for each of the said vagrants so to be delivered unto you, the same being the rate lost appointed by the justices of our said lord the king, assigned to keep the peace within the said county, at their general quarter sessions of the peace held in and for the said county. And you are on the back of this warrant, to sign a receipt for the money so paid, and also for the said vagrants so delivered unto you. Given under my band and seal, at — in the said county, the — day of — in the — year —

#### O. Warrant to fecure a lunatick.

Westmorland. { To the constables, churchwardens, and over-

WHEREAS it bath been proved before is—two of the justices of our lord the king, assigned to keep the peace within the said county, upon the oaths of A.W. and B.W. both of the parish of—in the county aforesaid, gentlemen, that A.L. late of—frequently goeth at large in the said parish of—and that he the said A.L. is by lunacy so far disordered in his senses, that he is dangerous to be permitted to go abroad, and that his legal settlement is in the parish of—These are therefore to authorize and require you, and every of you, to cause the said A.L. to be apprehended and kept safely locked up in the bouse of A.K. at—in the said county, the said A.K. being willing to keep and entertain him the said A.L. for a reasonable allowance in that behalf, and the said house being a secure place: And the said A.L. is to be kept so locked up only so long as such lunacy or disorder shall continue, and no longer. Given under our hands and seals, at—in the said county, the—day of—

P. Order to charge the lunatick's estate, with his keeping, maintenance, and cure.

Westmorland. { To the churchwardens and overseers of the poor of the parish of \_\_\_\_\_ in the said county.

HEREAS A. L. late of —— in the said county; being a person lunatick, and so far disordered in his senses that he was and is dangerous to be permitted to go abroad, hath by warrant under the hands and seals of us —— two of his majesty's justices of the peace for the said county, been apprehended and safely locked up in the house of A. K. at —— in the said county, the said house being a secure place for that purpose; And whereas it appears to us, on the oaths of C. W. churchwarden, and O. P. everseer of the poor of the parish of —— that they the said churchwarden

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# Q. Record to avoid the settlement of a bastard child born in vagrancy.

Westmorland. BE it remembred, that on the day of in the year of the reign of our Jovereign lord George the second. of Great Britain, France, and Ireland, king, defender of the faith, and so forth, A. B. and C. D. overseers of the poor of the parish of \_\_\_\_ in the said county, at \_\_\_ in the said county, do bring unto me \_\_\_ one of the juffices of our faid lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, the body of one A. P. and do complain unto me the justice oforefaid, and give me to be informed, That on the - day of in the year aforesaid, at - in the parish aforesaid, in the county aforesaid, she the said A. P. was wandring and begging, and that she the said A. P. then and there, to wit, on the faid - day of - at - aforesaid, in the parish aforesaid, and county aforesaid, so wandring and begging, was delivered of a (male) child; and that thereby she the said A. P. hath become chargeable, and is now chargeable, to the said parish of - and that she the said A. P. had not then, nor yet hath any lawful settlement in the said parish of ---- And thereupon they the said overseers of the poor of the parish aforesaid, do pray of me the justice aforesaid, that for themselves and for the other inbabitants of the parish aforefuid a due remedy may be provided, and that justice may be done in that behalf, according to the form of the statute in that case made. Which complaint, information, and prayer, by me the justice aforesaid being heard, I the said J. P. at - aforesaid, in the county aforesaid, on the said - day in the year aforefaid, upon the examination of the faid A. P. upon oath by me unto her upon the holy gospels of god administred, and upon other lawful evidence and testimony before me had and made, do find the said complaint and information to be true. And thereupon it is considered by me the justice of iresaid, that she the said A. P. le committed, and is by me committed, to the house of correction at - in the county aforesaid, until the next quarter sessions of the peace to be bolden within and for the said county. In testimony whereof, I the faid J. P. the justice afore-VOL. II.

# Marrant.

faid, at \_\_\_\_\_ aforesaid, in the county aforesaid, the \_\_\_\_ day of \_\_\_\_ aforesaid, in the year aforesaid, unto this record do set my seal.

Aelium. See Stamps. Aenire. See Process. Acrdia. See Jurors. Aerinice. See Ercise. Alauallers. See Alchouses. Ainegar. See Ercise. Unlawful assembly. See Riot.

# Mages. See Servants.

# Marrant.

FOR a warrant to fearch for stolen goods, fee Scarch

If a justice see a felony or other breach of the peace committed in his presence, he may in his own person apprehend the selon; and so he may by word command any person to apprehend him, and such command is a good warrant without writing: But if the same be done in his absence, then he must issue his warrant in writing. 2 H. H. 86.

Concerning which we will flew,

I. For what causes it may be granted.

II. What is to be done previous to the granting of it.

III. How far it is grantable on suspicion.

IV. The form of it.

## I. For what causes it may be granted.

There feems to be no doubt, but that a warrant may be lawfully granted by any justice, for treason, selony, or præmunire, or any other offence against the peace: Also it seems clear, that wherever a statute gives to any one justice a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such statute, it impliedly gives a power to every such justice

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Lord Go candour of the p that a ju any permidemyet inaithan any juffice to make out a warrant to bring before him any person accused of such offence, or compellable to do the thing ordained by fuch statute; for it cannot but be intended, that a statute giving a person jurisdiction over an offence, doth mean also to give him the power incident to all courts, of compelling the party to come be-2 Haw. 84. fore him.

But in cases where the king is no party, or where no corporal punishment is appointed, as in cases for servants wages, and the like, it seemeth that a fummons is the more proper process; and for default of appearance the justice may proceed: and so indeed

oftentimes it is directed by special statutes.

### II. What is to be done previous to the granting of it.

It is convenient, tho' not always necessary, that the party who demands the warrant be first examined on oath, touching the whole matter whereupon the warrant is demanded, and that examination put into writing. 1 H. H. 582. 2 H. H. 111.

Or at least it is fafe to bind him over to give evidence; lest afterwards when the offender shall be apprehended, or shall furrender himself, the party that procured the warrant be gone.

Dalt. c. 169.

### III. How far it is grantable on suspicion.

Lord Hale proves at large, contrary to the opinion of Lord Che (4 Inft. 177.) that a justice hath power to issue a warrant to apprehend a person suspected of felony, before he is indicted; and that, tho' the original suspicion be not in himself, but in the party that prays his warrant. 2 H. H. 107-110.

For the justices are judges of the reasonableness of the suspicion, and when they have examined the party accusing, touching the reasons of his suspicion, if they find the causes of suspicion to be reasonable, it is now become the justices suspicion as well as

2 H. H. 80.

And in another place speaking of this opinion of Lord Coke, he delivers himself seemingly with a kind of warmth not usual to him: I think, fays he, the law is not fo, and the constant practice in all cases hath obtained against it, and it would be pernicious to the kingdom if it should be as Lord Coke delivers it; for malefactors would escape unexamined and undiscovered, for a man may have a probable and strong presumption of the guilt of a person, whom yet he cannot positively swear to be guilty. 1 H. H. 579.

Mr. Hawkins likewise seems to be of the same opinion against Lord Coke, but delivereth himself with his wonted caution and candour: It seems probable, he says, that the practice of justices of the peace in relation to this matter, is now become a law, and that a justice may justify the granting of a warrant for the arrest of any person, upon strong grounds of suspicion, for a felony or other mildemeanor, before any indictment hath been found against him; yet inafmuch as justices claim this power rather by connivance, than any express warrant of law, and fince the undue execution of

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# Warrant.

it may prove so highly prejudicial to the reputation as well as the liberty of the party, a justice cannot well be too tender in his proceedings of this kind, and seems to be punishable not only at the suit of the king, but also of the party grieved, if he grant any such warrant groundlessy and maliciously, without such a probable cause as might induce a candid and impartial man to suspect the party to be guilty. 2 Haw. 85.

But a general warrant, upon a complaint of a robbery, to apprehend all persons suspected, and to bring them before a justice, hath been ruled void; and false imprisonment lies against him that

issues such a warrant. 1 H. H. 580. 2 H. H. 112.

### IV. The form of it.

1. Mr. Dalton says, the warrant is the better, if it bear date of the place where it was made. Dali. c. 169.

And Lord Hale fays, the place, tho' it must be alledged in pleading, need not be expressed in the warrant. 2 H. H. 111.

And Mr. Hawkins says, It is safe, but perhaps not necessary, in the body of the warrant to shew the place where it was made; yet it seems necessary to set forth the county in the margin at least, if it be not set forth in the body. 2 Haw. 85.

2. It may be directed to the sheriff, bailiff, constable, or to any indifferent person by name who is no officer; for the justice may authorize any one to be his officer, whom he pleases to make such; yet it is most advisable to direct it to the constable of the precinct wherein it is to be executed, for that no other constable, and a fortiori no private person, is compellable to serve it. 2 Haw. 85. Dalt. c. 169. 2 H. H. 110.

But in the case of an act of parliament, it is said, that if the act directeth that a justice shall grant a warrant, and doth not say to whom it shall be directed, by consequence of law it must be directed to the constable, and it cannot be directed to the sherisf, unless such power is given in the act. L. Raym. 1192. 2 Salk.

281.

3. The warrant may be stilled in divers manners: As, 1. In the name of the king; and yet the teste must be under the name of the justice that grants it out. Or, 2. It may be stilled and made only in the name of the justice. Or, 3. It may be made without any such stille, and only under the teste of the justice, or only subscribed by him. As followeth:

## In the king's majesty's name.

Westmorland. EORGE the second, by the grace of god, of Great Britain, France, and Ireland, king, defender of the faith, and so forth; To our sheriff of the county of to the high constables of the bundred of in the same county, and to the petty constables of the town of in the same county, and to all and singular our bailists and ministers in the same county, as well within liberties, as without, greeting:

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or as much

For a fmuch as A. I. of \_\_\_\_ bath come before J. P. equire, one of our justices assigned to keep our peace within the faid county, and bath &c.

(Concluding it in the justice's name, as thus;) Witness the said

Note, That wheresoever the warrant is made in the king's name, there it ought to be directed to all ministers as well within liberties as without, for that the king is made a party: And so it may be done in all other warrants, especially for felony, or for the peace or the good behaviour, because it is the service of the king. Dalt. c. 174.

### Or thus, in the name of the justice himself;

Westmorland. J. P. esquire, one of the justices of our lord the king, assigned to keep the peace within the said county; To the sheriff of the said county, to the bailiff or constables of the bundred of — within the said county, to the petty constables of the town of — within the said bundred and county, and to all other the ministers and officers of our said lord the king within the said county, and to every of them, greeting:

For a sinuch as &cc. Given under my hand and seal the

day of &c. Dalt. c. 174.

4. Regularly, the warrant, especially if it be for the peace or good behaviour, or the like, where sureties are to be found or required, ought to contain the special cause and matter, whereupon it is granted, to the intent that the party upon whom it is to be served, may provide his sureties ready, and take them with him to the justice to be bound for him; but if the warrant be for treason, murder, or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it needs not contain any special cause, but there the warrant of the justice may be to bring the party before him, to make answer to such things or matters generally, as shall be objected against him on the king's behalf. Dalt. c. 169. 2 Haw 85. 2 H. H. 111.

But Mr. Lambard fays, every warrant made by a justice of the peace ought to comprehend the special matter upon which it proceedeth; even as all the king's writs do bear their proper cause in their mouth with them: And as for the form that is commonly used, to answer to such things as shall be objected, and such like, they were not setched out of the old learned precedents, but lately brought in by such as either knew not, or cared not,

what they writ. Lamb. 87.

5. The warrant ought regularly to mention the name of the party to be attached, and must not be left in generals, or with blanks to be filled up by the party afterwards. 2 H. H. 114. Dalt. c. 169.

6. The warrant may iffue to bring the party before the juflice who granted the warrant specially, and then the officer is bound to bring him before the same justice; but if the warrant be

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# Watch.

to bring him before any justice, then it is in the election of the officer to bring him before what justice of the county he thinks fit, and not in the election of the prisoner. 1 H. H. 582. 2 H. H. 112.

7. It ought to fet forth the year and day wherein it is made, that in an action brought upon an arrest by virtue of it, it may appear to have been prior to such arrest; and also, in case where a statute directeth the prosecution to be within such a time, that it may appear, that the prosecution is commenced within such time limited: Likewise, where a penalty is given to the poor of the parish where the offence shall be committed, or the like, it ought to specify the place where the offence was committed. 2 Haw. 85.

8. Finally, it ought to be under the hand and feal of the justice who makes it out. 2 Haw. 85.

The execution of a warrant belongs to title Arreft.

# Match.

Watch and ward.

WATCHING is properly intended of the night, and warding for the day time. Dalt. c. 104.

Watches are of three kinds:

By the statute of Winchester,

and is inforced by the 5 H. 4. c. 3. which is, That from Ascenfion day to Michaelmas, in every city 6 men shall keep watch at every gate, in every borough 12 men, every town 6 or 4 according to the number of the inhabitants, and shall watch the town continually all night, from the sun setting to the sun rising. 13 Ed. 1. st. 2. c. 4.

This watch is to be set by the constable, and their power is this: If any stranger do poss by them, he shall be arrested until morning, and if no suspicion be found he shall go quit; and if they find cause of suspicion, they shall forthwith deliver him to the sheriff, until he be acquitted in due manner. And if they will not obey the arrest, they shall levy hue and cry upon them. id.

Inhabitants] It hath been resolved, that a stranger, who is not an inhabitant, cannot hereby be compelled to keep watch. 2 Haw. 80.

Deliver him to the sheriff ] That is, to the common gaol. 2 H. H. 96.

By the conflable.

2. But this watch only extends between Ascension day and Michaelmas; but there is another watch that may be kept by the constable ex officio, which may extend to other times; as by the 5 Ed. 3. c. 14. for night walkers, and persons suspicious by night or day. 2 H. H. 97.

And altho' a constable is not bound to any precise time for this kind of watch, nor punishable if he omit it, barely for the omis-

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fion, if he be ready upon occasion to do his office when required in these cases; yet it is in his power to hold such watches, as often as he pleases, and it is convenient and justifiable: and herein the watchmen are the ministers and assistants of the constable, and are under the same protection with him, and may act as he doth. 2 H. H. 97.

Yea it is holden, that every private person may by the common law arrest any suspicious night walker, and detain him till he give

a good account of himself. 2 Haw. 80.

3. There is also another kind of watch, which is by authority By the justices of the justices of the peace, which also may be held at other times than the above statute of the 13 Ed. 1. appoints; and the watch thus appointed hath the same power as either of the former: And this seems to be within the power of any one justice, by the first affignment in the commission; but the safer way, and more usual is, by order of sessions. Lamb. 186. 2 H. H. 97. Dalt. c. 104.

4. It feems to be agreed, that every inhabitant is bound to keep Who shall watch in his turn, or to find another. 2 Haw. 80. watch.

But they are not compellable to watch at the will of the conflable, but only when their turn cometh; which was the ancient custom at common law. Dalt. c. 104.

And the watching and warding ought to be by men able of body, and sufficiently weaponed. Dalt. c. 104.

And therefore a woman required to watch, may procure one to

watch for her. Comb. 243.

5. If a watchman take any one for suspicion of felony, he Persons taken by may inquire of his good name and fame, and if he finds him to watchmen. be of good name and fame, he may let him go, without being smilly of an election.

guilty of an escape. Dalt. c. 159.

And if a person will not obey the arrest of the watchmen, they may levy hue and cry upon him, that he may be taken; or else they may justify to beat him, for that he resistent the peace and justice of the realm; and may also set him in the stocks for the same until the morning. Dalt. c. 104.

And the watchmen may deliver such persons to the constable, or may convey them to a justice, to be examined, and to be bound over or committed, until they be acquitted in due manner.

Dalt. c. 104.

6. A watchman hath a double protection of the law: 1. As an Indemnity of affiftant to the constable, when the constable is present or in the watchmen. watch; for so every man who is affisting to the constable in the execution of his office, hath the same protection that the law gives the constable. 2. Purely as a watchman set by order of law; and the law takes notice of his authority sub eo nomine, and therefore killing of a watchman in execution of his office, is murder. 2 H. H. 98. 3 Inst. 52. 9 Co. 66.

And if a watchman be killed in endeavouring to apprehend a burglar, his executors shall be intitled to 40%. reward. 5 An.

6. 31. /. 2.

7. If any person resuse to watch in his turn, at the command Punishment for ment of the constable, he may present the default at the assizes or not watching.

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# Watch.

fessions, or may complain thereof to any justice of the peace, who may bind the offender to the good behaviour, and so over to the next sessions. Dalt. c. 104. And there he may be indicted. 2 Haw. 80.

But here it is to be noted, that in Cro. El. 204. which Mr. Dalton cites for his authority in this matter, it is not faid, that the justice may bind him to the good behaviour, but only thus,—that he may inflict punishment upon the refuser.

# Warrant for the keeping of watch.

Westmorland. { To the constable of the hundred of \_\_\_\_\_ in the faid county.

T a general quarter sessions of the peace holden atin and for the faid county, before us - esquires, justices of our lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, You are bereby required forthwith to iffue your warrants to the several petty constables within your faid bundred, that they do cause watch to be kept by night, and ward by day, with able men, within and throughout their respective constablewicks, from the - day of ensuing, unto the - day of -- then next following; and that they do apprehend or cause to be apprehended all rogues, wagabonds, and other wandring, idle, and disorderly persons, and carry them before some of his majesty's justices of the peace in and for the faid county, to be examined and further dealt withal according to law. Given under our bands and feals, the day and year first abovewritten.

Commitment of a person apprehended by the watch.

Westmorland. { To the constable of \_\_\_\_ and to the keeper of the house of correction at \_\_\_\_

WHEREAS A. O. was this day brought before me J. P. esquire, one of the justices of our lord the king, assigned to keep the peace within the said county, the said A. O. having been taken last night by the watch set by the constable of \_\_\_\_ and charged with wandring abroad at unseasonable times of the night, and also with other disorderly behaviour, and not now giving a good account of himself before me: These are to require you the said constable of \_\_\_\_\_ to convey the said A. O. to the said house of correction at \_\_\_\_ aforisaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you the faid keeper of the house of correction aforesaid, to receive the said A. O. into your custody in the Said house of correction, and him there fafely to keep until the next general quarter sessions of the peace to be bolden in and for the said county, allowing unto bem in the mean time such maintenance as he shall deserve by his labour; and have you him then there, together with this precept, Given under my band band

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band and feal, at \_\_\_\_ in the faid county, the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year of the reign of \_\_\_\_

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## Indictment for not watching.

HE jurors for our lord the king upon their oath present, that A. O. of - in the faid county, yeoman, on the - day of - in the - year of the reign of and long before, and always after unto the day of the taking of this inquisition, was, and yet is, an inhabitant of the town of aforesaid, in the county aforesaid, and that the said A. O. then and there, to wit, on the faid - day of - in the year aforesaid, at ---- aforesaid, in the county aforesaid, was duly summoned in his turn to watch with the confiable of - aforefaid, in the night of the same day; nevertheless the faid A. O. bis duty in that behalf not regarding, did not watch in the faid night of the same day, in the year aforesaid, nor in any part of the said night, with the said constable at - aforesaid in the county aforef.id, but did then and there utterly refuse so to do, and wilfully and obstinately therein did make default; in contempt of our said lord the king, and of his laws, and against the peace of our said lord the king, his crown and dignity.

Watchmaking. See Servants. Watermen. See Chames.

# Weights and measures.

THE particular weights and measures of different forts of goods, may be seen under their respective titles: and what is treated of here, is touching weights and measures in general.

- I. Of the different kinds of weights and measures.
- II. Standard of weights and measures to be kept in market towns.
- III. Mayors and other officers to feal and regulate measures.
- IV. Punishment of mayors and other officers for omitting their duty.

# Weights and measures.

## I. Of the different kinds of weights and measures.

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Divers weights.

1. Notwithstanding the many statutes which have enacted, that there shall be but one weight and one measure, throughout the realm, there always have been, and still are two kinds of weights used in England, and both warrantable; the one by law, and the other by custom; but they are for several forts of wares or commodities: for there is troy weight, and averdupois. Dalt. c. 112.

Troy weight.

2. Troy weight is by law; and thereby are weighed filk, gold. filver, pearl, and precious stones. And this hath to the pound 12 ounces. Dalt. c. 112.

Averdupois weight.

3. Averdupois (which in French is as much as to fay to have full weight) is by custom, yet confirmed by statute; and thereby are weighed all kind of grocery wares, drugs, butter, cheefe, flesh, wax, pitch, tar, tallow, wool, hemp, flax, iron, fleel, lead, and all other commodities which bear the name of garble, and whereof issueth a refuse or waste; (and also bread, by the 8 An. c. 18.) And this hath to the pound 16 ounces; and 12 pounds over are allowed to every hundred. Dalt. c. 112.

Divers measures.

4. And no less do the measures also differ in different places. Thus Mr. Dalton observes, that the bushel of corn in one place is greater than in another; and it feems, he fays, that the cultom of the place is to be observed: Yet he makes a quæry upon it, because it is contrary to the great charter, and divers other statutes; and custom or prescription against a statute seemeth not good. Dalt. c. 112.

#### II. Standard of weights and measures to be kept in market towns.

Standard to be kept in market towns, at which all may weigh.

In every city, borough, and market town, a common balance shall be, with common weights sealed, and according to the flandard of the exchequer, upon the common costs of such city, borough, or market town, in the keeping of the mayor, or conflable; on pain of 10 l. for such city making default, borough 5 1. and market town 40 s.

At which balance all the inhabitants may freely weigh without any thing paying; taking nevertheless of foreigners, for every draught within the weight of 40 lb. a farthing, and for every draught betwixt 40 lb. and 100 lb. an half penny, and for every

draught betwixt 100 lb. and 1000 lb. a penny.

And justices of the peace, mayors, bailiffs, and stewards of franchifes may enquire of offenders against this ordinance, and do execution of them that be found faulty. 8 H. 6. c. 5. 11 H. 7. c. 4.

#### III. Mayors and other officers to seal and regulate measures.

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1. The clerk of the market, and where there is none, the Measures to be mayor, or head officer, or other person having benefit of the sealed. market, shall cause to be sealed all measures duly gauged, by the standard which he shall have out of the exchequer. 22 & 23 C. 2. c. 12, f. 4.

2. For which he shall be paid, I d. for the sealing and mark- Fee for the same. ing of a bushel, an halfpenny for a peck or half peck, and a farthing for a gallon, pottle, quart, pint, or half pint. 22 C. 2.

3. And whofoever shall fell by any other weight, measure, or Penalty of using yard, not according to the standard, or keep any such whereby any other. any thing is bought or fold, shall forfeit 5 s. on conviction before one justice, or mayor, on oath of one witness; to be levied by the churchwardens and overfeers, or some of them, to the nse of the poor, by diffress. In default of diffress, imprisonment till paid. 16 C. c. 19. f. 2.

But water measure (viz. 5 pecks to the bushel, Dalt. c. 112.) in sea port towns shall continue as usual. id. f. 7. Except in the measuring of corn and salt. 22 C. 2. c. 8. f. 2.

4. And the mayors, and other head officers in market towns, Weights to be shall twice a year or oftner cause all weights and measures within examined. the same, to be brought before them, and examined; and such as they find defective, to be broken and burnt; and the offender shall forfeit to the mayor or other officer, for the first time, 6 s. 8 d. for the second time 13s. 4d. and the third time 20s. and be set on the pillory:

And two justices (1 2.) may hear and determine these offences, as well by examination as by inquiry, and fet fines and amerciaments, and make process thereupon, as if they were indicted before them for breaking of the king's peace. 11 H. 7. c. 4.

5. Also, the constable shall search, if any persons use any other Constables to measure than according to the standard; or shall strike in any search. other manner, than even by the wood or brim; or shall sell or buy by a measure unsealed; and if he find any unsealed measure, he shall break the same, and shall present the offenders at the next private or quarterly sessions. 22 C. 2. 6. 8. s. 6.

### IV. Punishment of mayors and other officers for emitting their duty.

1. If any mayor, lord of the liberty, or other person autho- Penalty of rerized to mark or feal measures, shall neglect or refuse, being re-fusing to seal. quired, to feal or mark any bushel, half bushel, or peck duly gaged; he shall forfeit for the first offence 5 1. and for every other offence 10 l. on conviction by presentment or indictment at the county fessions; half to the prosecutor, and half to the poor; to be levied by diffres; and for default of diffress, to be imprisoned

# Weights and measures.

by warrant of the faid justices till payment be made. 22 C. z.

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Penalty on tais due for fealing.

c. 8. f. 3, 4.

2. Or if he shall take more than one penny for the sealing and king more than marking of a bushel, or more than a halfpenny for a half bushel or peck, or more than a farthing for a gallon, pottle, quart, pint, or half pint; he shall forfeit 5 s. to the poor, on conviction before one justice, by the oath of one witness; to be levied by the churchwardens or overfeers, by diffress; in default of diffress, imprisonment till paid. 22 C. 2. c. 8. f. 4.

Penalty of fuffering other measures,

3. And if any mayor or other head officer, shall suffer any other measure to be used than according to the standard, and fealed; he shall forfeit 5 l. half to the prosecutor, and half to the poor, on conviction by presentment or indictment at the county fessions, by distress: for default of distress, to be imprisoned by warrant of the justices till paid. 22 C. 2. c. 8. f. 3.

General penalty for neglect of duty.

4. And generally, by the 16 C. c. 19. s. If any mayor. or other officer, or any lords of liberties or their agents, shall receive any fines or fees, other than are allowed by statute or custom; or shall take any fee for the marking, signing, or examination of any weights or measures, which have been formerly marked or fealed; or shall impose any fine without a due and legal trial of the offence; or shall otherwise misdemean himself in the execution of his office; he shall forfeit to the poor for the first offence 5 l. for the second 10 l. and for the third and every other offence 20 1. on conviction before one justice, on the oath of one witness; to be levied by the churchwardens or overfeers by diffress: for want of diffress, imprisonment till paid. 16 C. c. 19. J. 5.

Als to be given in charge.

5. And all justices of the peace, constables, and other officers shall see the acts abovementioned of the 22 C. 2. c. 8. and 22 & 23 C. 2. c. 12. put in due execution; and the justices of affize, and of the fessions, shall press the same in their charges to the grand juries. 8 An. c. 18. f. 12.

But after all, notwithstanding the punishments aforesaid, appointed by statute, for felling by false weights and measures; yet the fame is also an offence at the common law, and confequently may be punished by indictment, fine, and imprisonment.

# Wife.

Woman marrying pending an action.

1. T. 2 G. 2. King and his wife against, upon feveral pro-2 G. 2. King and his wife against Jones. The plaintiff mises. She by the name of Judith King appears by attorney, and pleads non affumpsit. And after a verdict for the plaintiff, the and Edward King bring a writ of error, and assign for error, that the has appeared and pleaded as a feme fole, whereas at the time of her appearance and plea she was married to the said Edward King. But by the court, This is to abate the plaintiff's writ by the act of the defendant, which was never allowed; we muit 2.

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must take it; that at the time of bringing the action the defendant was a feme sole, because they pretend to carry it back no farther than the appearance. And plaintiffs would be in a fine condition, if after they have arrested a woman, she shall be allowed to overthrow their proceedings by a subsequent marriage. And the judgment was affirmed. Str. 811.

2. A wife, or feme covert, is so much favoured in respect of Committing of that power and authority which her husband has over her, that fences with her she shall not suffer any punishment for committing a bare theft, in company with, or by coercion of her husband. 1 Haw. 2.

But if she commit a thest of her own voluntary act, or by the bare command of her husband; or be guilty of treason, murder, or robbery, in company with, or by coercion of her husband, she is punishable as much as if she were sole, because of the odiousness and dangerous consequence of these crimes. I Haw. 2. I. H. H. 47. Dalt. c. 157.

And the coercion of the husband is only a presumption till the contrary appear; for if upon the evidence it can clearly appear, that the wife was not drawn to it by the husband, but that she was the principal actor and inciter of it, she seems to be guilty as well as the husband. 1 H. H. 516.

3. A wife shall not be deemed accessary to a felony for re-Accessary in receiving her husband who has been guilty of it; as her husband ceiving her husband be for receiving her: because she is under the power of band. her husband, and she is bound to receive him. I Harv. 2.

4. H. 47.

4. But a wife may be indicted together with her husband, and Keeping a bawdy condemned to the pillory with him for keeping a bawdy house; house, for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex.

1. Hazv. 2.

5. And generally, a married woman shall answer as much as Wife to suffer if the were sole, for any offence not capital, against the common corporally; but law or statute; and if it be of such a nature that it may be comthe husband to mitted by her alone, without the concurrence of the husband, pay the forseishe may be punished for it without the husband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband shall not be included in it for an offence to which he is no way privy. But if a wife incur the forseiture of a penal statute, the husband may be made a party to an action or information for the same (as he may generally to any suit for a cause of action given by his wise), and shall be shall be shall be recovered thereupon. I Haw. 3.

6. If a wife willingly leave her husband, and go away, and Eloping. continue with her advouterer, she shall be barred for ever of

Action to demand her dower. 13 Ed. 1. ft. 1. c. 34.

M. 12 G. Morris and Martin. Action for meat and other things provided for the defendant's wife. The defendant proved fhe went away from him with an adulterer. Raymond Ch. J. held, that the husband should not be charged for necessaries for her,

the the plaintiff who provided for her had no notice; and he faid, Ch. J. Holt always ruled it fo, Str. 647.

T. 12 G. Mainvaring and Sands. In an action against the husband for a laced head fold to the wife, it was proved, that the wife lived from her husband in adultery, and that she told the plaintiff she had a husband, but that signified nothing, for she would pay him her self. Raymond Ch. J. held the defendant not chargeable, and said he should have ruled it so, if there had been no actual notice, which only strengthened the case. Str. 706.

T. 4 G. 2. Child and Hardyman. Action for linen fold to the defendant's wife. Upon non affumpfit, the delivery was proved. And the defendant proved that she had lived in a very lewd manner; one Mr. Nott frequently coming to her at her husband's house, and they were locked up together in a bed-chamber; and other indecencies passed between them. And it was also proved, that she several times went to the house of this Nott, a gentleman in Wiltsbire, who lived within 3 miles of the defendant's house. It did not appear farther, than that he disliked her going and flaying at Mr. Nott's. But under these circumstances, the husband and wife continued to live together. Afterwards, she went away from him, and went to Marlborough, where the refided for fome time; but after the leaving her husband's house, it did not appear that she ever saw Mr. Nott, or lived in a lewd manner. After some time, she sent Lucas an attorney to her husband, to defire that he would receive her again; the husband told him, that if she came again, she should never sit at the upper end of his table, nor have the government of the children, but should live in a garret. Then Lucas proposed to him, to make her an allowance, and proposed about 80 or 100 /. a year, he being worth about 5 or 600 l. a year. But that was not complied with; and afterwards the came to London, and bought the linen to the amount of 53 l. By Raymond Ch. J. If a woman elopes from her husband, tho' she does not go away with an adulterer, or in an adulterous manner; the tradefman trusts her at his peril, and the husband is not bound. And this hath been so ajudged in z or 3 cases. Indeed if he refuse to receive her again, from that time it may be an answer to the elopement. In this case he doth not absolutely refuse to receive her again; but that she should neither fit at his table, nor have any government of the children, but should be kept in a garret; and she deserved no better usage.

And the plaintiff was nonsuit. Str. 875.

M. 18 G. 2. Bolton and Prentice. In assumptit for goods sold and delivered to the defendant's wife, the case appeared to be, that the defendant and his wife had formerly lodged at the plaintiff's house, and the plaintiff furnished her with goods; and the defendant finding the plaintiff had helped her to pawn her watch, and suspecting he consederated with her, left the lodgings, after paying the plaintiff his bill, and forbidding him ever trusting her again. After this the defendant and his wife cohabited together for a year; when, without any cause appearing, he left her, locked up her cloaths, and upon her finding him out, resused to

admit her, C cloath her w the de upon new t cular terwa should to de mann appea any b wron wills. fkall c. 34 anoth band

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In wi admit her, and struck her, and declared he would not maintain her, or pay any body that did. In this diffress, she borrowed cloaths of her friends, and applied to the plaintiff, who furnished her with necessaries according to the defendant's degree; which the defendant refusing to pay for, this action was brought; and upon trial the jury found for the plaintiff. Upon motion for a new trial, the court held the verdict was right; for whilst they were at the plaintiff's, there was a particular reason for the particular prohibition; yet the causeless turning her away destitute afterwards, gave her the general credit again: and if a husband should be allowed, under the notion of a particular prohibition, to destroy her obtaining credit in one place, he may in the same manner prevent it with all people she is acquainted with. He appears to be a wrong doer, and therefore has no right to prohibit any body. They diftinguished this case from the case of Manby and Scott, 1 Sid. 109. for there the wife was guilty of the first wrong in eloping. Str. 1214.

7. Of women carried away (viz. violently, or against their Carrying her wills, 2 Infl. 435.) with the goods of their husbands, the king away with the shall have the suit for the goods so taken away. 13 Ed. 1. st. husband's goods. c. 34. That is, it shall be felony. And so, if any man takes another man's wife, with her husband's goods, against the hus-

band's will, this is also felony. Dalt. c. 157.

8. But a wife herfelf cannot feloniously take her husband's Wife taking the goods; and tho' she so takes her husband's goods, and deliver husband's goods, them to a stranger, yet it is no felony in the stranger. H. Pl. 65.

1 Haw. 93.

9. A married woman, by her own act (but not in respect of Guilty of forciwhat is done by others at her command, because all such comble entry.

mands of hers are void) may commit a forcible entry or detainer;
and upon the justice's view of the force, she shall be imprisoned
therefore, and she may be fined in such case: but such fine set
upon the wise, shall not be levied upon the husband; for the
husband shall never be charged for the act or default of his wise,
but when he is made a party to the action, and judgment given
against him and his wife. Dalt. c. 126. 9 Co. 72. 11 Co. 61.

the wife, or for a scandal published by her, the action lieth against saults both the husband and wife, and there the husband is chargeable to the damages or fine, because he is party to the action and judgment: but if a wife without her husband be indicted of a trespass, riot, or any other wrong, there the wife shall answer, and be party to the judgment only; and in such case, the fine set upon the wife shall not be levied upon the husband; yet after the husband's death, such damages or fines shall then be levied of the wife her self; and as for imprisonment, or other corporal pain, it shall be inslicted upon the wife only, and not upon the husband for his wife's act or default. Dalt. c. 139.

M. 19 G. 2. Finch and his wife against Duddin and his wife. In an action for a battery of the plaintiff's wife by the defendant's wife, there was judgment for the plaintiffs, and the wife of the defendant

defendant was only taken in execution. She moved to be difcharged, but upon affidavits of endeavours to take the husband, and it not appearing there was any defign to screen him, the court refused it, on the authority of Pitt and Meller. Str. 1237.

Which case of Pint and Meller, T. 15 G. 2. was thus: In trover against both, and judgment and execution against both; the wife petitioned to be discharged out of custody; which the court refused, unless it could be shewn, that there was fraud and collufion between the plaintiff and the husband, to keep her there.

Ser. 1167.

M. 10 G. Tarrant and Mawr. The wife libelled in the spiritual court for calling her whore, and there being proceedings likewise for defamation against ber by the other, the two husbands enter into an agreement to stay proceedings on both fides; and upon one of the wives going on, the hulband moved for a prohibition; but it was denied: for by the court, the fuit is by the wife, to recover her fame, and it is not in the power of the hufband to restrain her. Str. 576.

Receiving Stolen goods.

Guilty of conspiracy with her

Wife hiring to

Evidence for or

against her hufband.

be a fervant.

hufband.

11. If a woman receive stolen goods into her house, knowing them so to be; or shall lock them up in her chest or chamber, her hulband not knowing thereof; if her hulband, so soon as he knoweth thereof, do forthwith forfake his house, and her company, and make his abode elsewhere, he shall not be charged for her offence; whereas otherwise, the law will impute the fault to

him, and not to her. Dalt. c. 157.

12. A profecution for confpiracy is not maintainable against a husband and wife only; because they are esteemed but as one person in law, and are presumed to have but one will.

1 Haw. 192.

Woman fervant 13. If a woman who is a fervant shall marry, yet she must serve marrying. out her time, and the husband cannot take her out of her master's Dalt. c. 58. fervice.

14. Also if a married man and his wife do bind themselves to ferve, they shall be compelled to serve, according to their covenant or agreement. Dalt. c. 58.

15. If the wife maliciously kill her husband, it is petty trea-Killing ber hufband, petty trea- fon; but if the husband maliciously kill his wife, it is but murder. Dalt. c. 142.

16. Husband and wife cannot be witnesses for one another; not regularly against one another. 2 Haw. 431.

But a wife may demand furety of the peace against her husband threatning to beat her outrageously, and a husband also may have

it against his wife. 1 Haw. 127.

And in other criminal cases, the wife may be a witness against her husband, where she is the party grieved; but not in civil cases. Dalt. c. 164.

17. A wife cannot be bound herself by recognizance, but her Cannot be bound by recognizance. fureties only. Dalt. c. 117.

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# Windows.

I. First meeting of the commissioners, for the issuing precepts to return assessors.

II. Second meeting; charge to the affessors, with the manner of laying the affessment.

III. Third meeting; signing the assessment, with warrant to collect.

IV. Fourth meeting; the appeal.

V. Colletting

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VI. Collector paying to the receiver.

VII. Receiver paying into the exchequer.

VIII. Duplicates to be transmitted into the exchequer.

IX. General penalty on officers not doing their duty.

X. Indemnity of officers in doing their duty.

# I. First meeting of the commissioners, for the issuing precepts to return assessors.

1. Commissioners of the land tax shall be commissioners for the Commissioners of duties on houses and windows. 20 G. 2. c. 3. f. 6. these duties.

But no commissioner of the land tax shall act as commissioner of these duties, unless duly qualified, (that is, unless he be taxed at 100 l. a year in the county or division, except certain counties in Wales, as by the land tax acts) on pain of 20 l. to be levied as other penalties by this act. 21 G 2. c. 10. f. 3.

But they shall not be obliged to take the oaths, and subscribe the declaration, and receive the facrament, as directed by the 25 C. 2. c. 2. as other persons qualifying for offices; but only to take the oaths of allegiance, supremacy, and abjuration, as by the

land tax acts. 20 G. 2. c. 3. f. 27.

2. Which said commissioners shall meet yearly, at the most Time and place usual place of meeting, at such time as shall be appointed for the of meeting. first general meeting of the commissioners of the land tax, or on such other day as they shall think proper, before April 30. yearly.

20 G. 2. c. 3. f. 6.

3. And at such first meeting, they may agree to subdivide Subdividing. themselves and the other commissioners not then present, in such manner as to them shall seem meet. id. s. 6.

4. Also, at such first meeting, they or the major part of them precept to return then present, shall direct their several or joint precepts (A) to such affessors, inhabitants, and such number of them as they shall think most convenient, to be presentors and affessors, requiring them to Vol. II.

# Windows.

appear before the said commissioners, at such time and place as they shall appoint, not exceeding ten days. 20 G. 2. c. 3. f. 6.

Affessor in 5. But no person in a city, borough, or town corporate, shall towns corporate be compelled to be an assessor or collector out of the limits thereof. 20 G. 2. c. 3. f. 18.

Collectors to return their last collection bills.

6. And the last collectors shall cause a copy of the assessments given to them, and of the collection made by them, to be fairly written and signed by them, but with such alterations therein as shall be necessary, by reason of any new houses erected, or the number of windows in any house increased, or by reason of the change of inhabitants or occupiers of any house, or otherwise, or a true duplicate thereof, signed as aforesaid, to be delivered to three or more commissioners yearly, within ten days after their first meeting. 20 G. 2. c. 3. s. 8.

So that it may be most proper to direct the precept for the last

collectors to be affeffors.

Affesfors to take the oaths.

7. And every affessor, before he acts, shall take the oaths required by the 1 W. c. 18. before three commissioners. 20 G. 2.

Which oaths are the oaths of allegiance and supremacy.

But quakers, instead of such oaths, shall be allowed to make and subscribe the declaration of sidelity, prescribed by the said act of the 1 W. c. 18. 20 G. 2. c. 42. f. 4.

Affesfors refu-

8. Affessors refusing to take the oaths, or their offices, shall-forseit 5 1. 20 G. 2. c. 42. f. 2. by distress and sale, as by the 20 G. 2. c. 3.

# II. Second meeting; charge to the affesfors, with the manner of laying the affessment.

Charge to the

1. The commissioners shall openly read, or cause to be read to the assessment of their charge unto them, and how they ought to make their assessments. 20 G. 2. c. 3. f. 6.

Duty on houses.

2. That is to fay, For every dwelling house inhabited, shall be paid yearly 2s. 20 G. 2. c. 3. f. 2.

Duty on win-

dows.

3. And for every window or light in every dwelling house, containing 10, 11, 12, 13, or 14 windows or lights, shall be paid moreover the yearly sum of 6 d. and for every window or light in every dwelling house as aforesaid, containing 15, 16, 17, 18, or 19 windows, the yearly sum of 9 d. each; and for every window or light in every dwelling house as aforesaid, containing 20 windows or lights, and upwards, the yearly sum of 1 s. each.

Unto what windows the fame shall extend.

4. And every kitchen, scullery, buttery, pantry, larder, wash-house, laundry, bakehouse, brewhouse, and lodging room, belonging to or occupied with any dwelling house, whether joined to it or not, shall be deemed part thereof, and the windows therein charged accordingly. 21 G. 2. c. 10. s. 1.

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Also sky lights, and windows or lights in staircases, garrets, cellars, passages, and in all other parts of dwelling houses, to what use soever applied shall be charged.

what use soever applied, shall be charged. f. 2.

5. And where several windows are fixed in one frame, if the Several windows partition or division between them is of the breadth of 12 inches, in one frame, the window on each side of the partition shall be deemed a distinct

window. 20 G. z. c. 3. f. 38.

6. And all windows in frames which shall give light into Window salightmore rooms than one, shall be charged as so many separate sing two tooms, windows, as there are rooms inlightned thereby. 20 G. 2. c. 3.

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7: And no windows or lights shall be deemed to be stopped up, Windows stopunless it be done effectually with stone or brick, or plaister upon ped up. lath, or upon any other material commonly used to plaister upon, or with the same kind of materials whereof the outside of the house doth chiefly consist. 21 G. 2. c. 10. f. 11.

But this not extend to windows stopped up with any materials,

before the year 1746. J. 12.

And if any occupier shall open any windows, after the assessments are settled, and warrants for collecting signed, without notice in writing to the surveyor, he shall forfeit 205. 20 G. 2. c. 3. f. 39. by distress and sale, f. 28. half of which sine shall go to the informer. 21 G. 2. c. 10. f. 15.

8. Where a house shall be inhabited by two or more persons Two families in or families, it shall pay as if it was inhabited by one person or one house.

family only. 20 G. 2. c. 3. f. 31.

9. Where any dwelling house is let in different apartments to House let in different apartments to House let in different apartments, and the landlord of such house pays other taxes and parish rates for the same; such landlord shall be deemed the occupier of such dwelling house, and be charged with the duties for the same, as one entire house. 20 G. 2. c. 3. f. 35.

10. And the rates shall be charged only upon the inhabitants or Rates to be occupiers, and not on the landlord who let or demised the same. charged on the

20 G. 2. c. 3. f. 5.

by fuch infants, shall be liable; and may be proceeded against as chargeable. other persons making default. id. f. 15.

12. Each distinct chamber in a college or hall in the universi- Colleges: ties, shall pay as if it were an entire house paying to church and

poor. id. f. 32.

13. Every edifice in the inns of court or chancery, being seve- Inns of court, rally in the occupation of any person, shall pay for every window or light; but shall not pay the 2s. duty on houses. 20 G. 2.

c. 3. f. 33. 21 G. 2. c. 10. f. 18, 19.

14. Such dwelling houses only, where the occupier, by reason Cottages, of poverty only, is exempted from the usual taxes to church and poor, shall be exempted from the duties; and that only in such cases where the dwelling houses so occupied are cottages, not containing above nine windows in the whole. 20 G. 2. c. 3. s. f. 29.

15. But every house whereof the keeping only is commit- Houses lest to ted or lest to a person or servant who pays not to church and servants.

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# Windows.

poor, shall pay as if inhabited by the occupier or tenant. id.

Obstructing the aileffor.

16. And if any person shall wilfully obstruct or molest any affessor in the execution of his duty, he shall forfeit 5 1. to be levied as the rates and duties. 21 G. 2. c. 10. f. 14.

Affeilors to affeis themfelves.

17. And the affesfors shall assess themselves and the commissioners, as other persons are affessed. 21 G. 2. c. 10. s. 16.

Day for bringing in the affeilments.

18. And the commissioners shall then and there prefix a day for the persons to appear before them, and bring in their assessments in writing under their hands; fetting forth therein the names and furnames of the feveral occupiers or inhabitants of each respective dwelling house chargeable, the number of windows or lights, and the several sums they ought to pay. 20 G. 2. c. 3. f. 6.

Which day shall be on or before June 4. yearly. J. 7. (B.)

#### III. Third meeting; figning the affestment, with warrant to collect.

Affesiment delivered in.

1. The affesfors appearing at the day appointed, shall deliver in their affestiments, to be verified upon their oaths, and not otherwife. 20 G. 2. c. 3. f. 6.

Returning the names of collectors.

2. And shall then return the names of two or more able and fufficient persons to be collectors, for whom the parish or place shall be answerable. 20 G. z. c. 3. f. 6.

Signing the affestment.

3. At which time also, three or more of the commissioners shall set their hands to the affessments, testifying their allowance 20 G. 2. c. 3. f. 9.

Note; It is not necessary by the words of the act that the same

shall be sealed.

Appointing collectors.

4. And they shall also appoint two of the persons named in the affestment, or any two others whom they shall think able and responsible, to be collectors. id. (C.)

Warrant to collect.

5. Also on delivery and return of the affestments, three or more commissioners shall, at least ten days before the rates shall become due, issue their warrants or estreats under their hands and feals, to the collectors, for the speedy collecting and levying the fame, as they shall become due and payable. id. f. 7.

And they shall forthwith deliver the affessment so allowed of,

to the collectors. f. 9.

Collector refufing to act.

6. Collectors refusing to take their offices, shall forfeit 5 1. 20 G. 2. c. 42. s. 2. by distress and sale, as by the 20 G. 2.

Appointing the

7. Then three or more commissioners shall also give the coltime for appeal. lectors notice when and where the appeals of any persons who shall think themselves over-rated, may be heard and determined. id. f. 12.

And all appeals which shall be made between Mar. 25. and Aug. 20. yearly, shall be heard and determined by the commisfioners upon fuch days as shall be by them appointed between Aug. 20. and Sep. 15. And all such other appeals as shall be

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made between Sep. 29. and Jan. 20. yearly, shall be heard and determined upon fuch other days as shall be appointed between Jan. 20. and Feb. 10. 21 G. 2. c. 10. f. 7.

8. And where the commissioners shall have omitted to execute Remedy where the powers to them given, within the time, and according to the the commissiomanner above prescribed, two or more of them may meet, and ners have on itexecute the fame at any other times, as there shall be occasion. ted their duty. 20 G. 2. c. 42. f. 1.

9. At this third meeting likewife comes in the business of the Surveyors to surveyors, who shall be appointed by the king, or three commission and fioners of the treasury; who shall appoint them such falaries as survey. they shall think reasonable. 20 G. 2. c. 3. f. 30, 42, 43.

And they shall have power to examine the assessments, before they are figned and allowed by the commissioners; and at seasonable times, with a constable, to view and examine whether there be any more windows than are affested, and to pass for that purpose thro' any house, to go into any court, yard, or backside thereunto belonging, and externally to view the windows which cannot be conveniently feen or numbred without going thro' fuch house: and this they may do twice a year. id. f. 30.

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And the constables, and other his majesty's officers, shall be affifting; and shall also obey and execute the warrants of the commissioners to them directed. id. f. 22.

And if any person shall wilfully obstruct or molest any surveyor in the execution of his duty, he shall forfeit 5 l. to be levied as the rates and duties. 21 G. 2. c. 10. f. 14.

#### IV. Fourth meeting; the appeal.

1. Every collector shall, within ten days after notice from the Notice of the commissioners of the time and place of appeal, cause publick notice appeal day to be given in the to be given in every parish church or chapel within his district, church. immediately after divine fervice, on the lord's day (if any fuch divine service shall be performed there within that time) of the time and place fo appointed by the commissioners for hearing and determining appeals: And shall also, on the same day, cause the like notices to be fixed in writing on the door of fuch church or chapel. 20 G. 2. c. 3. f. 12.

2. And after the rates are figned and allowed by the commif- Surveyor to give fioners, if the surveyor finds on his survey, that any houses or in his surcharge. lights have been omitted, or are under rated, he shall certify the fame in writing under his hand, by way of furcharge, on or before Aug. 10. and Jan. 10. yearly, to any three or more commissioners, in order to have such omission or under rate certified in the affest-20 G. 2. c. 3. f. 37. 21 G. 2. c. 10. f. 6.

And he shall also leave a written notice at the dwelling house of every occupier so surcharged, that he intends to charge them for fuch number of windows or lights as are charged in fuch certi-21 G. 2. c. 10. f. 6.

3. And every person intending to appeal shall give at least ten Notice of appeal. days notice thereof in writing to the furveyor, or to one or more of the affessors. 21 G. 2. c. 10. J. 8.

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4. And

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Affessment not

prefent.

interested to

withdraw.

on a general ap- 2. c. 10. f. 5. Surveyor may be

4. And no affessment shall be altered or diminished, except to be altered but only on hearing the appeal, upon a general appeal day. 21 G.

> 5. And the furveyor, affeffors, and appellant may be prefent during the time of hearing and determining the appeal, unless

they misbehave. 21 G. 2. c. 10. J. 8.

6. And in case of any controversy arising between the commillioners concerning the affestments, the commissioners that shall be concerned therein shall have no voice, but shall withcraw during the debate, until it be determined by the rest of the commisfioners. 20 G. 2. c. 3. f 21.

Surveyor to he gave notice.

7. The furveyor appearing to make good his furcharge, shall make oath that make oath that a written notice was left at the dwelling houses of the feveral occupiers fo furcharged, that he intended fo to furcharge them. 21 G, 2. c. 10. f. 6.

The parties to be examined on oath.

How far the ap-

peal determined thall be final.

8. At the appeal, the commissioners shall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 G. 2. c. 3. f. 12.

And they shall not make any abatement of the charge or furcharge, unless it appear upon oath, that such person is over rated.

21 G. 2. c. 10. f. 8.

9. Appeals determined shall be final: Except that if the furveyor or appellant shall then declare himself distatisfied with the determination of the commissioners, they shall, at such person's request, state specially and sign the case upon which the question arose, together with their determination thereupon, and cause the fame to be delivered to the party, to be by him transmitted to one of the judges; who shall with all convenient speed return an answer, with his opinion subscribed; according to which, the afsessment shall be altered or confirmed; provided that the determination of the commissioners shall stand, with respect to the payments which shall be due precedent to the opinion upon the case certified by the judge. 21 G. 2. c. 10. f. 9, 10.

## V. Collecting.

Collector to make demand.

1. The collectors shall make demand of the parties chargeable, or at the places of their last abode, within ten days after the duties shall become due and payable. 20 G. 2. c. 3. f. 7.

2. And on payment thereof, they shall give acquittances gratis; which shall be a full discharge to the person paying the

same. id.

May diftrain.

And give re-

ceipts.

3. And if any person shall refuse to pay to the collector on demand, he may distrain such person by his goods; and shall keep the distress four days at the owner's cost; and if not paid in the faid four days, then the distress shall be appraised by two inhabitants; and then fold by the officer; the overplus (if any) over and above the charges of taking and keeping the distress, to be immediately restored to the owner. id. s. 11.

And where any refusal, neglect, or resistance shall be made, it shall be lawful by warrant of three commissioners to break

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open any house in the day time, calling in the constable to

4. And if sufficient distress cannot be found, three commissio- Commitment ners by their warrant may commit any person who shall refuse or for want of neglect to pay for 20 days after demand, to the common gaol, diffress. 20 G. 2 c. 3. f. 11. until payment shall be made.

5. Arrears may be levied by the commissioners in the same Levying arrears.

manner as the rates and duties. 21 G. 2. c. 10. f. 17.

6. Where the occupier removes without paying the rates, the Occupier recommissioners are to transmit a certificate thereof, to the commissioners. fioners where the person resides; who shall cause the same to be levied and paid to the collectors of the place from whence the person did remove. 20 G. z. c. 3. f. 41.

#### VI. Collector paying to the receiver.

1. The collectors shall pay in the money received, within ten Collector to pay days after receipt thereof, to the receiver general or his deputy, to the receiver, at such place as the commissioners shall appoint. 20 G. 2. c, 3.

Provided that the coilectors shall not be obliged to travel above ten miles from their habitations, to pay the money collected.

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2. Which receiver general shall give acquittances gratis; which Receiver to give shall be a full discharge to the collectors. 20 G. 2. c. 3. f. 21. acquittances.

3. And the faid receiver general shall give notice of his ap- Deputy receiver. pointment of a deputy (which appointment shall be under hand and feal) unto three or more commissioners, within 20 days after their first meeting, and within 20 days after the death or removal of any deputy. 20 G. 2. c. 3. f. 23.

4. Every collector shall have 3 d. in the pound, for what mo- Collector to have

ney he shall pay to the receiver general. id. f. 11.

5. And if the collector shall neglect or refuse to pay the mo- Collector failing.

ney by him received, at the time appointed, three or more commillioners may imprison his person, and seize and secure his estate as well freehold as copyhold, and all other effate both real and personal to him belonging, or which shall come to his heirs, executors, or administrators: Which commissioners may appoint a time for a general meeting of the commissioners, giving publick notice thereof ten days before; and the commissioners at such general meeting may fell fuch estates, or any part of them, for payment. 20 G. 2. c. 3. f. 16.

And if there be any arrear, by reason of the failure of a collector for whom the parish or place is answerable, three commisfioners may cause it to be re assessed in such parish or place. id.

6. And the collectors shall deliver a schedule of arrears to the Returning arreceiver general, to be by him returned into the exchequer, that rears into the exchequer. process against the defaulters may be issued from thence. 20 G. 2. c. 3. f. 21.

# Mindows.

The receiver general returning any persons in arrear who have paid, shall forfeit double damages to the party, and double the

fum to the the king. f. 25.

And no receiver shall return any person in arrear in his accounts, unless such account be passed in the exchequer, within two years after the end of the year for which such rate shall be payable, but the same shall be a debt on him and his securities. J. 26.

#### VII. Receiver paying into the exchequer.

Times of paying into the exchequer,

1. The receiver general shall pay the sum received into the exchequer, by sour quarterly payments (viz. June 24. Sep. 29. Dec. 25. and Mar. 25,) or in 40 days after the respective quarterly pay days; on pain of 500 l. to him who shall sue. 20 G. 2. c. 3. s. 10.

Receiver's allowance. 2. And he shall have an allowance of 2 d. in the pound, for the money he shall pay into the exchequer. f. 11.

## VIII. Duplicates to be transmitted into the exchequer.

Transmitting the duplicates.

The commissioners shall cause true duplicates of the affessiments to be made out, within 3 months at farthest after March 25. yearly; the appeals being first heard and determined. Such duplicates to be made for the same hundreds, wards, parishes, or places, for which distinct duplicates are and have been usually made out for the land tax; and the names and sirnames of the assessor and collectors respectively shall be inserted therein. 20 G. 2. c. 3. f. 10.

One of which duplicates shall be delivered to the receiver general, and another transmitted into the office of the king's remembrancer in the exchequer; for which the proper officers shall

give acquittances gratis. id.

And the commissioners clerks shall not have the 1 d.  $\frac{1}{2}$  in the pound, until this be done.  $\int . 11$ .

#### IX. General penalty on officers not doing their duty.

Penalty on the furveyor.

1. If any surveyor shall knowingly, thro' favour or malice, under rate or over rate, or omit to charge any person liable, or shall be guilty of any corrupt or illegal practice in the execution of his office; he shall forseit 100 l. and his office. 20 G. 2. c. 3. s. 1. 10.

On the affeffor.

2. Assessor guilty of concealment or favour in assessing, shall

forfeit not exceeding 51. nor under 40s. id. f. 6.

On the collector, 3. Collector gathering by a rate not figured and allowed by the commissioners; or receiving rates from persons not charged therewith; or collecting from any person more than he is charged, and not paying the whole sum collected; or fraudulently altering any

rate after being figned by the commissioners, shall forfeit 201. id. f. 36. by distress. f. 28.

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4. And generally; If any affessor, collector, or other person On others, appointed by the commissioners, shall wilfully neglect or refuse to perform his duty, three commissioners may sine him not exceeding 201. nor under 51. to be levied by distress, and charged amongst the rates to the receiver general. id. f. 21.

5. And the penalties and forfeitures, for which no other way General method of levying is prescribed, shall be levied by warrant of three commissioners by distress, rendring the overplus, after deducting rea-

fonable charges for diffraining. id. f. 28.

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#### X. Indemnity of officers in doing their duty.

Persons sued for any thing done in the execution hereof, may Treble costs. plead the general issue, and have treble costs. 20 G. 2. c. 3. f. 66. 21 G. 2. c. 10. f. 20.

## A. Precept to the high constables to return affesfors.

Westmorland To Henry Holme, gentleman, high constable of the West Ward within the said county.

The form of the faid warrant to be indorfed.

Westmorland To the constable of \_\_\_\_\_.

BY wirtue of a precept from the commissioners of the duties upon houses and windows for the said county to me directed, you are bereby required forthwith to give notice to the last collectors of the said duties within your constablewick, that they and every of them do personally appear tefore the said commissioners at — on — the — day of — at the hour of — in the forenoon of the same day, in order to be appointed assistors of the said duties for this present year, and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there to certify what you shall have done in the execution hereof. Given under my hand the — day of — in the year of our lord —

Henry Holme, bigh constable.

## B. Appointment of affesfors, with their charge.

Westmorland. W E the commissioners of the duties upon bouses are bereunto set and seals affixed, do bereby nominate and appoint - to be affesfors of the said duties within the town. - in the county aforesaid. And we do hereby require you the faid affesfors, to make your affessment for the fame, according to the proportions of the last affessment for the said duties within your Said township; but with Such alterations therein as shall be necessary by reason of any new bouses erected, or the number of windows in any bouse increased, or the removal and change of the inhabitants, or otherwise. And your said affessment you are to make out in writing, fetting forth therein the names of the several occupiers or inhabitants. the number of windows or lights, and the fum which they ought to pay; and fign the same; and deliven the same to us upon oath at in the county aforesaid, on the day of in the forenoon of the same day. At which time and place you are also bereby required to return unto us the names of two or more able and sufficient inhabitants within your said township, to be collectors of the said assessment; and in the mean time to give notice unto them, that they do also then and there appear, to receive their appointment, nomination, and charge. Given under our hands and feals the - day of - in the year of our lord -

# C. Appointment and charge of the collectors, with warrant to collect.

Westmorland. TITE the commissioners of the duties upon bouses and windows for the said county, whose names ere bereunto set and seals affixed, do bereby nominate and appoint - to be collectors of the Said duties for the town-- in the said county, for this present year, and do hereby imposwer them to demand, collect, and receive the same. And you the said collectors are bereby required, within ten days after your receipt hereof, to cause publick notice to be given in the church or chapel immediately after divine service on the lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the said duties will be beard and determined by the said commissioners at - And if any person shall neglect or refuse to pay the same unto you upon demand, you are hereby required forthwith to give notice unto us thereof, that Juch further proceedings may be had therein, as to law doth apper-And the same when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places bereafter following; that is to say, - deducting out of the last payment thereof, 3d. for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and feals the \_\_\_\_ day of \_\_\_\_ in the year of our lord -

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Wine.

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# Wifne.

vessels, lets than 25 gallons; on pain of forseiting the same, or imported.

the Levent) shall be imported in stacks, bottles, or what fize to be vessels, lets than 25 gallons; on pain of forseiting the same, or imported. the value; half to the king, and half to him that shall seize or sue by the laws of excise, or in the courts at Westminster. 1 G. 2.

1. 2. 6. 17. 6. 7. 8.

2. No wine shall be brought forth of France, but in English To be imported in English thip-

hipping, on pain of forfeiture. 5 El. c, 5. f. 11.

And the justices in sessions may determine offences against this

act, by indictment or information. f. 30.

3. The king may iffue commissions to license persons to sell Licence for rewine by retail, to be drank as well within the house or other tailing. place of the party as without. 12 C. 2. c. 25. f. 2.

Which they may do for 21 years, or under, for a yearly rent,

but no fine. J. 3.

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And no person, not being so authorized, shall retail wine; on pain of 5 l. half to the king, and half to him that shall sue in

any court of record. 12 C. 2. c. 25. f. 1.

4. The lord chancellor, lord treasurer, lord president, lord Setting the privy seal, and the two chief justices, or any three of them, shall prices of wines, yearly between Nov. 20. and Dec. 31. set the prices of wines sold in gross; so that proclamation be made thereof in term time in the court of chancery, or in the town where they shall be fold; and if any person shall offend against the said affessment, he shall forfeit for every vessel 40 s. half to the king, and half to the mayor if in a town corporate; and if not, to him that shall sue. 28 H. 8. c. 14. s. 2, 3. 37 H. 8. c. 23. s. 2. 12 C. 2.

And the justices of the peace, and mayors, may hear and determine the defaults of such offenders, and punish them by imprisonment, or otherwise, by their discretions. 28 H. 8. c. 14.

1.4.

And by the 37 H. 8. c. 23. If any person shall refuse to sell at the prices limited, the mayor and recorder and two ancient aldermen in London, being no vintners; and the mayor, aldermen, and other head officers elswhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use. s. 3.

5. No person selling wine shall mix wines together, nor with Adulterating any other thing; on pain that the seller in gross shall forseit 100 l. wines. and the retailer 50 l. half to the king, and half to him that shall

fue in any court of record. 12 C. 2. c. 25. f. 11.

6. By the 5 An. c. 27. 231 cubical inches shall be a wine Wine measure, gallon, 63 gallons a hogshead, 126 gallons a butt or pipe, and 252 gallons a ton. f. 17.

Wire. See Ercife.

Mitchcraft.

# Witchcraft.

Witchcraft abo- 1. RY the 9 G. 2. c. 5. No profecution, fuit, or proceeding, shall be commenced or carried on against any perfon for witchcraft, forcery, inchantment, or conjuration, or for charging another with any fuch offence, in any court whatfoever.

Pretending to witchcraft.

2. But if any person shall pretend to exercise or use any kind of witchcraft, forcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend from his skill or knowledge in any occult or crafty science, to discover where, or in what manner, any goods or chattels, supposed to have been stolen or lost, may be found; every person so offending, being convicted on indicament or information, shall suffer imprisonment for a year without bail or mainprize, and once in every quarter of the faid year, in some market town of the proper county, upon the market day there, stand openly on the pillory for one hour, and also shall (if the court by which such judgment shall be given shall think fit) be obliged to give sureties for his good behaviour, in fuch fum, and for fuch time, as the faid court shall judge proper, according to the circumstances of the offence, and in such case shall be further imprisoned until such sureties be given. f. 4.

> See Evidence. Witnesses.

# Momen.

· Concerning women confidered as wives, or femes covert; fee title Wife.

Concerning women having two husbands, or men two wives; fee title Polygamy.

Concerning the ravishment of women, see title Bape.

For clandestine marriages, and counterfeiting marriage licences and registers; see title Marriage.

under ten.

Carnally know- 1. I F any person shall unlawfully and carnally know and abuse ing a semalechild any woman child under the age of ten years, he shall be guilty of felony without benefit of clergy. 18 El. c. 7.

Taking a woman by force.

2. None shall take by force any maiden within age (that is, the age of 12 years, being the age of consent to marriage, 2 Inft. 182.) by her own consent nor without; nor any wife or maiden of full age, nor any other woman against her will; on pain of imprisonment for two years, and after, fine at the king's will. 3 Ed. 1. c. 13.

Forcing her to become bound.

3. If any person take by force, or otherwise, any woman sole, having any substance of lands, tenements, or moveable goods. and inforce her before she be fet at liberty, to bind her felf to c. 9. 4. having and t ftors. mifdo doers, what that : ring, fame

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him by statute or obligation; such bond shall be void. 31 H. 6.

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4. Whereas women, as well maidens, as widows, and wives, The offence having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances, are oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to other by their assent, or defiled,—it is enacted, that what person that taketh any woman so against her will unlawfully, that is to say, maid, widow, or wise, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; and that such missoers, takers, and procurators to the same, and receitors, knowing the said offence, shall be adjudged as principal selons, 3 H. 7. c. 2. And by the 39 El. c. 9. Benefit of clergy is taken away from the principals, procurers, and accesssaries before.

Upon the face of which said statute of the 3 H. 7. these things are required to make the offence selony; 1. That the maid, wise, or widow, have lands, or tenements, or moveable goods, or be an heir apparent. 2. That she be taken away against her will. 3. That the taking was for lucre. And 4. That she be married to the missoer, or to some other by his consent; or be desired (that is, carnally known.) For if these concur not, and be so laid in the indistment, the missoer is not a selon within this statute, but otherwise to be punished. 3 Inst. 1 Haw. 110.

The faid act makes not only the takers, but the procurers, and abettors of the felony, and receivers of the woman wittingly, knowing the fame, to be all principal felons; the like whereof Lord Coke fays he hath not found in any other statute that he remembers. But by a construction of the common law, they that receive the missoers, and not the woman, are accessaries only. 3 Inst. 61, 62.

But those who are only privy to the marriage, but no way parties to the forcible taking away, or consenting thereto, are not within the statute. 1 Haw. 110.

It is no manner of excuse, that the woman at first was taken away with her own consent; because if she afterwards resuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power. I Haw. 110.

Also, it is not material, whether a woman so taken contrary to her will, be at last married or defiled with her own consent, or not; if she were under the force at the time. 1 Haw. 110.

In Fulwood's case, M. 13 C. it was resolved, that the woman taken away and married, may be sworn and give evidence against the offender, who so took and married her, tho' she be his wise de facto. 1 H. H. 661.

5. If any person above the age of 14 years, shall unlawfully Taking a woman take or convey, or cause to be taken or conveyed, any maid or under 16. woman child unmarried, being within the age of 15 years, out.

of the possession and against the will of her father, or mother, or guardian; he shall suffer two years imprisonment, or pay such fine as shall be affested by the court, half to the king, and half to

the parties grieved. 4 & 5 P. & M. c. 8. f. 3.

H. 15 G. 2. K. against Cornforth and others. The court granted an information against the defendants, for taking away a natural daughter under 16, under the care of her putative father;

being of opinion it was within this statute. Str. 1162.

And if any person shall so take away, or cause to be taken away, and deficur, any fuch maid or woman child; or shall against the will or knowledge of the father, or if he is dead, of the mother having tuition of fuch child, contract matrimony with her by letters, messages, or otherwise; be shall be imprisoned for five years, or pay such fine as shall be affested by the court, half to the king, and half to the parties grieved. f. 3.

And if any woman child or maiden, being above the age of 12 years, and under 16, shall confent or agree to such person so making fuch contract of matrimony; the next of kin to her shall

have, hold, and enjoy her lands during her life. f. 6.

But by the 26 G. 2. r. 33. No fuit shall be had in any ecclefiaffical court, in order to compel a celebration of marriage in facie ecclesia, by reason of any contract of matrimony whatsoever, whether per verba de prafenti, or per verba de futuro. And the marriage of any person under the age of 21, without the confent of parents or guardians, shall be null and void.

Appeal by a wo

Woman fland-

ing mute.

Benefit of

clergy.

6. In an appeal by a woman, the appellee cannot wage battel, but must put himself upon his country. 2 Haro 427.

7. Peereffes shall be tried as peers, for treason or felony. 20

Peereffes how to H. 6. c. 9. be tried.

8. Women upon flanding mute, are liable to pain fort & dure,

as men are. 2 Haw. 331.

9. A woman being convicted for an offence, for which a man may have his clergy, shall suffer the same punishment as a man should suffer, that has the benefit of his clergy allowed; that is, shall be burnt in the hand, and further kept in prison as the court shall think fit, not exceeding one year. 3 W. c. 9.

But she shall have the benefit of the said statute but once. 4 &

5 W. c. 24. f. 13.

Judgment in treafon and felony.

10. The judgment against a woman, in case of high treason is, not the fame as against a man traytor, to be hanged, cut down alive, have the bowels taken out, and the body quartered; but to be drawn to the place of execution, and there burned:

And this also is the judgment against a woman, in case of petit treason; whereas the judgment against a man for petit treason is,

that he shall be hanged:

But in case of felony, the judgment is the same against both man and woman, to be hanged by the neck till dead. 2 Haw.

444.

Plea of preg-Bancy.

11. It is clear, that if a woman quick with child be condemned either for treason or felony, the may alledge her being with child in order to get the execution respited, and thereupon the sheriff shall be commanded to take her into a private room, and to im-

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panel a jury of matrons to try and examine, whether the be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. But it is agreed, that a woman cannot demand such respite of execution, by reason of her being quick with child, more than once. 2 Haw. 464.

12. Women are not obliged to appear at the torn or leet. Attending the torn and leet. 3 Haw. 57.

13. Mr. Hawkins feems to be of opinion, that a custom of Serving the ofthe inhabitants ferving the office of constable by turns, is good; fice of constable, and that when it comes to the turn of a woman inhabitant, she must procure one to serve for her. 2 Haw. 63.

# THOOD.

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. Lilveim bas Ris I. T is proper to infert here in the first place, a clause in the Pulling down flatute of the 13 Ed. 1. fl. 1. c. 46. both upon its own hedges of ground account, and its being referred to afterwards by subsequent sta- improved. tates; viz. Where sometime it chanceth, that one having a right to approve, doth then levy a dyke or an bedge, and some by night, or at another featon, when they suppose not to be espied, do overthrow the brige or dyke, and it cannot be known by werdiet of the affize or jury, who did overthrow the bedge or dyke, and men of the towns near will not indict fuch as be guilty of the fact; the towns near adjoining shall be distrained to levy the bedge or dyke at their own cost, and to yield damages.

And by the 3 & 4 Ed. 6. c. 3. Such person as shall bring an affixe hereupon, and have judgment to recover, shall have his da-

mages trebled by the judgment of the court. 1.4.

One bawing a right to approve Forasmuch as the lord ought to divide the parts of the common improved, by the hedge, ditch, or other defence; now this clause provideth, that if persons unknown, either in the night or otherwise, so secretly prostrate the ditches, hedges, or other fences, as the lord cannot know against whom to bring his affize or other action; and the men of the towns next adjoining thereunto round about do not indict the mifdoers of the fact, those next towns round about shall be distrained to make the hedge or ditch at their own cost, and yield damages to the lord. 2 Inft. 476.

Indict That is, indict him at the king's fuit, either of a riot, force, or trespass: But here it is demanded, what time have the next towns round about adjoining to indict the misdoers, seeing here is no time appointed; and the answer is, that seeing no time is appointed, the law doth appoint (as in many cases it doth) a year and a day for the indicting of the misdoers; and by the indictment the lord shall know against whom to bring his action. 2 Inft. 476.

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The towns near adjoining shall be distrained to levy the bedge or dyke, at their own coft, and to yield damages] If the bordering towns do not within a year and a day indict the misdoers, then shall the lord or other party grieved bring his action upon this branch, against the towns bordering round about the town wherein the fact was done, and judgment shall be given, that they shall at their proper costs make the ditch or hedge, and yield damages; and after judgment given, they shall be distrained to make the hedge or ditch. 2 Inft. 477.

woods wherein there is common of pafture.

2. By the 35 H. 8. c. 17. intitled, The bill for the preservation of awords, No person who shall have any woods or underwoods wherein others have common of passure, shall cut down the same, until the fourth part thereof shall be set out and fenced by the lord with the affent of the major part of the tenants; and if they cannot agree, then two justices being thereunto appointed by the more number of the justices of the shire in their quarter sessions, shall let out the same. f. 7.

Burning coal wood; barking fruit trees.

3. If any person shall maliciously, willingly, and unlawfully burn, or cause to be burned, any heap of wood prepared, cutand felled, for making of coals, billets, or talwood; or bark any apple trees, pear trees, or other fruit trees; he shall forfeit to the party grieved treble damages by action of trespass at the common

law, and also 10 l. to the king. 37 H. 8. c. 6. f. 4.

Robbing orchards; breaking hedges; pulling up fruit trees; fpoiling wood growing.

4. Every person who shall rob any orchards or gardens; or break or cut any hedge, pails, rails, or fence; or dig, or pull up, or take up any fruit tree or trees in any orchard, garden, or elsewhere, to the intent to take and carry the same away; or shall cut or spoil any woods or underwoods, poles, or trees standing (the fame not being felony by the laws of this realm); every fuch perfon, his procurers and receivers, knowing the same, being thereof convicted by confession, or oath of one witness, before one justice (or mayor), shall give to the party such recompence and satisfaction for damages, and within such time, as the said justice shall appoint; and the same to be only for the first fault: And if such offender shall be thought by the justice not able, or do not make fuch recompence, then he shall commit him to the constable where the offence shall be committed, or the party apprehended, to be whipped. And for every such offence for which the offender shall be eftsoons committed in form afore limited, the person so offending to receive the faid punishment of whipping. 43 El. c. 7. f. 1.

And if the constable shall not by himself, or some other execute upon the offender the faid punishment, the justice may commit

him to the common gaol till he comply. f. z.

Note, that robbing of orchards doth not feem to be comprehended in any other statute, so that the punishment thereof is restrained to this statute: But the other offences abovementioned are further punishable by other statutes hereafter following:

The same not being felony by the laws of this realm ] The diffinction in which case seemeth to be this; If they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not telony, but only

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fully treb defa only a trespass, for a man cannot steal part of the freehold; but if they be severed from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a trespass

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5. By the 15 C. 2. c. 2. The constable may apprehend, or Hedge breaking, cause to be apprehended, every person he shall suspect having or and other wood carrying any burden of any kind of wood, underwood, poles, or folen. young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails, or hedgewood, broom or furze; —— And by warrant of one justice (A) directed to any officer, such officer shall have power to enter into and fearch the houses, outhouses, yards, gardens, or other places belonging to the houses of every person they shall suspect to have any kind of wood, underwood, poles, or young trees, or bark, or bast of any trees, or any gates, siles, posts, pales, rails, or hedge wood, broom or furze; and where they shall find any such, to apprehend the persons suspected for cutting and taking the same; And as well those apprehended carrying, as those in whose houses or other places the same shall be found, to carry before one justice. And if such person do not then and there give a good account how he came by the same, such as shall satisfy the said justice; or else shall not in some convenient time to be fet by the faid justice, produce the party of whom he bought the same, or some credible witness to depose upon oath fuch fale thereof, he shall be convicted of cutting and spoiling the fame, and punished as by the faid act of the 43 El. and further by this act:

That is to fay, he shall for the first offence give the owner such recompence or satisfaction (B) for damages, and within such time, as the justice shall appoint; and over and above pay down presently to the overseers for the use of the poor, such sum not exceeding 10s. as the justice shall think meet; and if he do not make such recompence, and also pay the said sum to the poor, the said justice shall commit him (C) to the house of correction not exceeding one month, or to be whipped (D) by the constable. And if he shall again commit the said offence, and be thereof convicted as before, he shall be sent to the house of correction for one month, and be there kept to hard labour. And if he shall again commit the said offence, and be thereof convicted as before, he

shall be deemed an incorrigible rogue.

But no person shall be punished by this act, unless he be que-

stioned in fix weeks after the offence committed.

6. And by the faid act of the 15 C. 2. c. 2. Whosoever shall Buying of stolen buy any burdens of wood, or any poles or sticks of wood, or any wood. other the premisses, which may be justly suspected to have been stolen or unlawfully come by; one justice (on complaint in six weeks as aforesaid after the offence committed) may examine the matter on oath; and if he shall find that the same was bought of a person who might justly be suspected to have stolen or unlawfully come by the same, and that the same was stolen or unlawfully come by, he may award the party who bought the same to pay treble value (E) to him from whom it was unlawfully taken; and in default of present payment, may issue his warrant to levy the same

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by diffress (F), and in default of diffress, to commit the party to gaol at his own charge, there to remain one month without bail.

Destroying wood

7. If any person shall either by day or night, cut, take, degrowing, or the stroy, break, throw down, bark, pluck up, burn, deface, spoil, inclosures there- or carry away, any wood springs, trees, poles, wood, tops of trees, under woods or coppice woods, thorns or quickfets, without the consent of the owner, or of the person chiefly intrusted with the care and custody thereof; or shall break open, throw down, level, or destroy any hedges, gates, posts, stiles, railing, walls, fences, dikes, ditches, banks, or other inclosure thereof; the owner may have such satisfaction and recompence from the inhabitants of the parishes, towns, hamlets, villages, or places, joining on such wood springs or wood grounds, and recover such damages against such place or places, and in the same manner and form as by the (above recited) act of the 13 Ed. 1. fl. 1. c. 46. Unless the offender, by such parishes or places, be convicted in fix months. 6 G. c. 16. f. 1.—This is to be understood, if the offender is not known.

But if the offender is known, then it is enacted as follows; viz. If any person shall in a riotous, open, tumultuous, or in a secret or clandestine manner, forcibly or wrongfully and maliciously, and without confent of the owner, or perfon chiefly intrusted with the care thereof, cut down, deltroy, break, bark, throw down, burn, take, deface, spoil, or carry away, any wood, or springs of wood, underwood, or coppice wood; or break open, throw down, level, or destroy any hedges, gates, posts, stiles, rails, fences, ditches, banks, or inclosures of such woods, woody grounds, coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quickfets; Two justices, or the justices in fessions, on complaint made by any inhabitant of such parish or place, or by the owner of the wood, or by any other, may cause the offender to be apprehended, and hear and determine the offence; and on conviction, shall commit (G) the offender to the house of correction to hard labour for three months, and where there is no house of correction, then to the prison for four months, and shall also order the offender to be publickly whipped by the master of such house of correction once a month, during such three months, if it is in a borough; or in the market town where fuch house of correction stands, or in the next market town next adjacent to such house of correction, on the market day, between the hours of eleven and two. And where there is no house of correction, the said justices shall order him to be whipt by the common hangman once a month, during such four months, on the market day of such borough, or on the market day of some town, between the hours of

eleven and two. 1 G. ft. 2. c. 48. f. 2. 6 G. c. 16. f. 2.

And before he shall be discharged, he shall find sufficient sureties for his good behaviour for two years. 1 G. fl. 2. c. 48. f. 3.

8. By the 22 & 23 C. 2. c. 7. If any person shall in the night time, maliciously, unlawfully, and willingly destroy any plantations of trees, or throw down any inclosures; he shall forfeit to inclosures in the the party grieved, treble damages. J. 5.

Defroying plantations, or throwing down

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And three justices (1 2.) may enquire thereof, in fix months, as well by a jury, as by examination of witnesses on oath, or by any lawful ways, which to them shall seem meet. 1. 6, 7.

9. If any person shall maliciously set on fire, or burn, or cause Setting fire to

to be burnt, any wood, underwood, or coppice, or any part wood. thereof; he shall be guilty of felony. 1 G. st. 2. c. 48. f. 4.

10. By the 9 G. c. 22. commonly called the Black act, (which Deftroying trees, by the 24 G. 2. c. 57. hath continuance to Sep. 1. 1757, &c.) If or burning woods any person shall unlawfully and maliciously cut down, or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit; or set fire to any stack of wood; or forcibly rescue any person in custody for any the said offences; or by promise or reward procure any to join him therein; he shall be guilty of selony without benefit of clergy. And the hundred shall answer damages.

Which faid act is inferted more at large in the title of that

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wood out of the realm, on pain that the owner of the ship shall forseit the ship and tackle; the owner of the wood, double value of the wood; and the master and mariners all their goods, and be imprisoned for a year. s. 2.

And if any person shall carry any wood to any ship, to be transported; the owners, masters, and mariners, shall forseit in

like manner. f. 3.

And if any person shall obtain of the king a licence to transport wood, and shall carry more than is contained in his licence; he shall forfeit treble value, and be imprisoned for a year. J. 4.

And they which have licence, shall lade all at one place certain;

on pain of forfeiting all their goods and chattels. f. 5.

The said forfeitures to be half to king, and half to him that shall sue in any court of record: Moreover, all and singular justices of the peace, within three years after any offence committed, may hear and determine the same by a jury. 1.6.

A. Warrant to fearch for stolen wood; on the

Westmorland. { To the constable of \_\_\_\_\_.

WHEREAS A. I. of — yeoman, bath this day made oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that divers quantities of wood, within the space of six weeks last past, have been cut, taken, and carried away off and from his lands at — in the said county [or as the case shall be]; and that he bath just cause to suspect, and doth suspect, that the said wood, or part thereof, is concealed in the houses, outhouses, yards, gardens, or other places belonging to such houses, of A. O. of — yeoman, at — aforesaid; These are therefore

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fore to require you to enter into, and search the said bouses, outhouses, yards, gardens, or other places belonging to such bouses of him the said A.O. at — aforesaid; and if on such search you shall there sind any such awood, that then you apprehend the person in subost bouse, outhouse, or other place it shall be found, and bring him before me, or some other of his majesty's justices of the peace for the said county, that such proceedings may be had thereupon, as to law doth apportain. Given under my hand and seal at — in the said county, the — day of — in the — year

B. Order for satisfaction to the owner; on the

Westmorland. II HEREAS A. I. of - in the faid now last past, did make oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that on or since the day of - now last past, a certain quantity of wood, the property of him the faid A. I. at - in the parish of in the county oforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did fuspell, that A. O. of -- in the said county, yeoman, did cut, Spoil, take, and carry away the same; And whereas the said A. O. A. C. constable of \_\_\_\_\_ in the said county, carrying wood suspected to be stolen by him the faid A. O. [Or, whereas a certain quantity of wood, suffected to be stolen, was this day, by virtue of my warrant for that purpose directed to the constable of - in the said county, found in the bouse [or other place] of the said A. O. at aforefaid] And whereas the faid A. O. being now brought before me, bath not given to me any fatisfactory account how he came by the faid wood, nor can produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof; therefore the said A. O. is convicted by me of cutting, spoiling, taking, and carrying away the said wood; And whereas also it is duly proved before me, that A. I. of \_\_\_\_ aforesaid, yeoman, was and is the owner of the said wood, and that the said offence was committed at \_\_\_\_ aforefaid, in the parish of \_\_\_ in the said county, I do therefore hereby order and appoint the said A. O. within the space of \_\_\_\_ days now next ensuing, to pay unto the said A. I. the sum of \_\_\_\_ in recompence and satisfaction for damages done unto him the faid A. I. by him the faid A. O. in cutting, Spoiling, taking and carrying away the faid wood; and I do also hereby order the said A. O. within the space of - days now next enfuing as aforesaid, to pay to the overseers of the poor of the parish of \_\_\_ aforesaid, for the use of the poor of the Said parish, the fum of 108. for his faid offence. Given under my band and feal, at - in the faid county, the day of -

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#### Commitment thereupon for non-payment.

To the constable of ---- and to the keeper Westmorland. of the house of correction at --- in the faid county.

WHEREAS A. L. of --- in the said county, yeoman, on the day of --- now last past, did make oath before me J. P. esquire, one of his majesty's justices of the peace for the faid county, that within the space of fix days then last past, a certain quantity of wood, the property of him the said A. I. at in the parish of -in the county aforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that A.O. of - in the faid county, yeoman, did cut, spoil, take, and carry away the same; now last past, apprehended by A. C. constable of \_\_\_\_\_ in a country, carrying swood subset. county, carrying wood suspected to be stolen by him the said A. O. [Ot, whereas a certain quantity of wood, suspected to be stolen, was on the \_\_\_\_\_ day of \_\_\_\_\_ now last past, by virtue of my warrant for that purpose directed to the constable of ---- in the said county, found in the bouse (or other place) of the said A. O. at aforesaid;] And whereas the said A. O. on the -- now last past, having been brought before me, did not and could not give to me any futisfactory account how he came by the faid wood, nor could produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof, and thereupon was by me convicted of cutting and spoiling the said wood, and ordered to pay to the said A. I. the owner of the faid wood, the sum of - within days then next ensuing, in recompence and satisfaction for damages, and also the fum of 10s. to the overfeers of the poor of the parish ofaforesaid where the said offence was committed, for the use of the poor of the said parish; And whereas it appears to me, that the faid several sums have been duly demanded of him the said A. O. but that he the said A. O. bath refused, and doth refuse to pay, and bath not yet paid the same, nor any part thereof: I do therefore hereby require you the faid conflable of - aforefaid, to convey the said A. O. to the said house of correction at - aforesaid, and to deliver him to the keeper thereof, together with this warrant: And I do bereby command you the faid keeper to receive him into your custody in the said bouse of correction, and there to detain him for the space of \_\_\_\_ days from the day of the date hereof. Herein fail you not. Given under my hand and feal, at \_\_\_\_ in the faid county, the \_\_\_\_ day of \_\_\_\_ in the \_\_\_\_ year -

If instead of being sent to the house of correction, he is ordered to be whipt, then fay, - I do therefore hereby command you the said constable forthwith to receive the said A. O. into your custody, and to strip bim naked from the middle upwards, and subip bim until his body be bloody.

E. Order for the buyer of stolen wood, to pay treble damages; on the 15 C. 2. c. 2.

Westmorland. WHEREAS it bath been duly proved before me—esquire, one of his majesty's justices of the peace for the said county, that A. O. of —yeoman, did within the space of six weeks now last past, buy several burdens of wood, of B. O. of —yeoman, and that he the said B.O. is justly suspected to have solen the same from A. I. of —yeoman, and that the said wood, at the time when the said A. O. so bought the same, was of the value of 10s. I do therefore hereby order that the said A. O. do forthwith pay unto the said A. I. the sum of 30s. the same being treble value of the said wood so by him bought as aforesaid. Given under my hand and seal, at —year of the reign of ——day of ——in the —year of the reign of ——

F. Warrant of distress for non-payment of the same.

Westmorland. 

Here recite the order — Then say,

And whereas the said A. O. hath not paid to

the said A. I. the aforesaid sum of 30 s. nor any part thereof; These

are therefore to command you to leave the said sum of — upon the

goods and chattels of the said A. O. by distress and sale thereof, and

forthwith to pay the same unto the said A. I. Given &c.

G. Commitment for destroying trees; on the 1 G. f. 2. c. 48, and 6 G. c. 16.

Westmorland. To the constable of \_\_\_\_\_ and to the keeper of the house of correction at \_\_\_\_\_ in the faid county.

FOR ASMUCH as A.O. of —— in the county aforesaid, yeoman, is this day duly convicted before us —— esquires, two of his majesty's justices of the peace for the said county, for that he the said A.O. on the —— day of —— now last past, at —— aforesaid, in the county aforesaid, did wrong sully and maliciously cut down two ash trees [or as the case shall be] the property of A.I. of —— yeoman, without the consent of him the said A.I. the owner thereof, or of any other person chiefly intrusted with the care and custody thereof; We do therefore hereby command you the said constable to convey the said A.O. to the said house of correction at —— aforesaid, in the county aforesaid, and to deliver him to the keeper thereof, together with this precept. And we do also hereby require you the said keeper of the said house of correction, and him there keep to hard labour, for the space of three months now next ensuing, and until he shall find sufficient sureties for his good behaviour for two years: And we do likewise hereby order you the said keeper of the said house of correction, publickly to whip him the said heeper of the said house of correction, publickly to whip him the said

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A. Q. once in every month during the said three months, in the market town of \_\_\_\_ in the said county, on the market day there, between the hours of eleven and two. And for so doing, this shall be your sufficient warrant. Given under our hands and seals, at \_\_\_ in the said county, the \_\_\_ day of \_\_\_ in the \_\_\_ war\_\_\_\_

Wool. See Woollen manufakure.

### Moollen manufadure.

Oncerning differences between clothiers and their servants or workmen, see title Servants.

I have nothing to do under this title, but to reduce it into some kind of order, out of the consusion of above an hundred statutes; for, to the honour either of the laws, or of the people, there hath not occurred in all the books, one adjudged case, throughout this extensive title. In truth, it is not the industrious labourer, but the idle and profligate, that doth create most trouble in the courts of law.

After having first premised, that in almost all the laws hereafter specified under this title, it is enacted, that if any person shall be sued for any thing done in putting them in execution, he may plead the general issue, and have treble costs; I shall reduce these statutes for the encouragement of the woollen manufacture, under the following heads:

- I. I shall premise some statutes which are not general enough to be treated of more at large.
- II. Concerning the winding of wool by the feller.
- III. Laws to prevent the exportation of wool from Great Britain, and of wool and woollen cloth from Ireland; and therein also of fuller's earth.
  - IV. Concerning cards for manufacturing of wool.
  - V. Concerning the deceitful working of woollen cloth.
  - VI. Concerning the fulling of cloth.
  - VII. Concerning the searching of cloth, and therein of the length, breadth, and weight thereof.
  - VIII. Concerning the dying of cloth.
  - IX. Concerning tenters, and the stretching of cloth.
  - X. Concerning the dressing of cloth.
  - XI. Concerning mixed or medley broad cloth in par-

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XII. Con-

### Modlen manufadure.

- XII. Concerning the Yorkshire manufacture in particular.
  - XIII. Concerning burying of the dead in woollen
  - XIV. Against importation of woollen cloth.
  - XV. Encouragement of the exportation of woollen manufactures.

#### I. Statutes not general enough to be treated of more at large.

7 Ed. 4. c. 1. Worsted weavers in Norwich and Norfolk.

12.H. 7. c. 1. Worsted, says, and stamins in Norfolk. 5 H. 8. c. 2. White straits in Down.

6 H. 8. c. 8. Straits in Degon.

14 & 15 H. 8. c. 3. Worsteds in Yarmouth and Linn. 14 & 15 H. 8. c. 11. Veses in Suffolk.

25 H. 8. c. 18. Clothiers in Worcefterfbire.

33 H. S. c. 3. Folding of cloths in North Wales.

33 H. 8. c. 16. Worfted yarn in Norfolk. 1 Ed. 6. c. 6. Worfted yarn in Norfolk.

5 & 6 Ed. 6. c. 24. Hats, dornecks, and coverlets in Norwich and Norfolk.

1 & 2 P. & M. c. 14. Ruffels fattens, fattens reverles, and

fuftians of Naples, in Norwich.

2 & 3 P. & M. c. 13. An act for the inhabitants of Hallifax to buy wools.

1 El. c. 14. Woollen cloths in divers towns in the county of

8 El. c. 7. Drapers, cottoners, and frizers of Shrewsbury.

14 El. c. 12. Drapers, cottoners, and frizers of Shrewfoury.

35.El. c. 10. Devonsbire kerseys or dozens.

13 & 14 C. 2. c. 5. Stuffs in Norfolk and Norwich.

13 & 14 C. 2. c. 22. Bay making in the Dutch Bay hall at

22 & 23 C. 2. c. 8. Kidderminfter fluffs.

1 G. ft. 2. c. 41. Bay making in Colchefter. 9 G. c. 9. An act for the better qualifying the manufacturers of stuffs and yarn in the city of Norwich, and liberties thereof, to bear offices of magistracy in the said city, and for regulating elec. tions of fuch officers.

3 G. 2. c. 8. Regulating elections in Norwich.

#### II. Concerning the winding of wool by the feller.

1. No man shall make any inwinding within the fleece, at the rolling up of his wool; nor put in the same, locks, pelt wool, tar, stones, fand, earth, grass, nor any dirt; and if he do, the party grieved may bring his action at common law of trespass and deceit. 8 H. 6. c. 22.

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2. No person shall wind any sleece not sufficiently washed, except in counties where they do not use to wash sheep; nor shall wind within any sleece, clay, lead, stones, sand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the sleece may be the more weighty, to the deceit and loss of the buyer, (except where sleeces are sold by number, and not by weight;) on pain that the seller shall forseit 6 d. a sleece, half to the king, and half to him that shall sue. 23 H. 8. c. 17.

III. Laws to prevent the exportation of wool from Great Britain, and of wool and woollen cloth from Ireland; and therein also of fuller's earth.

r. To avoid frequent repetitions under this head, it may be Several things proper to premife (once for all) these things following:

premised.

(1) Notwithstanding the limitation of actions by the profecutor, in the following sections, to one year after the offence committed; yet by a general clause 9 & 10 W. c. 40. The king may cause persons guilty of exporting wool, woolfells, fuller's earth, or scouring clay, to be prosecuted at any time in three years. f. 9.

(2) That all actions, suits, and informations upon any act for preventing exportation of wool, wool fells, wool flocks, mortlings, shorlings, worsted, bay or woollen yarn, cruels, or wool slightly manufactured, or mattrasses or beds stuffed with combed wool, or wool fit for combing, fuller's earth, fulling clay, tobacco pipe clay, or any other scouring earth or clay, from Great Britain or Ireland; or for preventing the exportation from Ireland into foreign parts, of cloth, serges, bays, kerseys, frizes, druggets, shalloons, stuffs, cloth serges, or any other drapery made of or mixed with wool, manufactured in Ireland,—may be entied and prosecuted (except as is herein after otherwise expressed) in any court of second at Westminster, or in the court of exchequer in Scotland, or at the quarter sessions of the peace, or before any two justices out of sessions in a summary way, or in Ireland by any law relating to the revenue. And if the property be claimed by any person, the proof shall lie upon him, and not on the officer or seizer. 12 G. 2. c. 21, f. 18.

Which clause hath enlarged this article very much; by bringing in all those statutes, with which the justices before had nothing to do.

(3) And if the profecution is in any court of record at West, minster, for any of these offences, in or before the statute of the 10 5 11 W. c. 10. a capias shall issue after the first process, specifying the sum of the penalty sued for; and such person shall give good bail to the officer serving the process, to appear to answer to the prosecution; and at the time of appearance shall give bail in court, to pay the penalties if convicted, or yield his body to prifon. f. 20.

And if any person shall be in prison for want of bail, for exportation of wool or wool fells (or for aiding or abetting the same, 12 G. 2. c. 21. f. 27.) and shall refuse to appear or plead to a de-

claration or information to be delivered to him or to the gaoler. by the space of one term, judgment shall be entred against him by default; and if judgment be so obtained against him by default. (or by verdict, or otherwise), and he pay not in three months the fum recovered, the court shall order him to be transported for feven years. 4 G. c. 11. f. 6.

(4) And to prevent collusive seizures, or fraudulent agreements to evade the penalties, None but officers of the customs, excise, or falt, except the officers of the guard ships hereafter mentioned, shall enter informations of seizure of wool or woollen goods; which shall be prosecuted in their, or in the attorney general's

name, and not otherwise. 12 G. 2. c. 21. f. 14, 15.

And if fuch officer make any fuch collusive feizure, lent agreement, he shall forfeit 200 l. and be disqualified for any office in the revenue; and the owner making fuch agreement with him, shall forfeit treble value; to him who shall fue in the courts at Westminster, Dublin, or Edinburgh. id. f. 16.

But if any person concerned in such fraudulent seizure or agreement, shall first (in three months) discover his offence to the commissioners of the customs, so that one accomplice be convicted; he shall be discharged of the penalties, and shall have the whole money recovered on the conviction (the charges first deducted). f. 17.

And if any person shall oppose or hinder any the said officers, or their affiltants, in feizing any the goods before mentioned; or if any person armed, or disguised, shall attempt to rescue any the faid goods feized; he shall be transported for seven years. f. 26.

And moreover, if any person offer a bribe to any officer for connivance; he shall forfeit 300 l. to him who shall sue in any

court of record at Westminster. s. 25.

(5) On condemnation of any wool, or other goods abovementioned, the commissioners of the customs respectively shall cause them to be publickly fold to the best bidder, where they shall think proper; and out of the produce of such sale, shall cause the charges of condemnation and fale to be paid, and the remainder to fuch person who shall seize, inform, or sue. 12 G. 2. c. 21. f. 20,

But if the officers shall receive information from any person, whereby any feizure is made, or any profecution effected; fuch informer shall have half of what shall be recovered. f. 21.

And if any person convicted in the penalty of 3s. a pound (hereafter mentioned) be not able to pay; the commissioners may cause 1 s. a pound to be paid to the informer or prosecutor, by

the receiver of the revenue. f. 22.

And for the profecutor's further encouragement, by the 19 G. 2. c. 34, hereafter following, If on an information for seizure of wool (during the continuance of the faid act) a verdict is found for the claimer; yet if the judge shall certify upon the record, that there was propable cause of seizure, the claimer shall have no cofts. f. 16.

2. By the 13 & 14 C. 2. c, 18. The exportation of wool was made felony; but this was repealed by the 7 & 8 W. c. 28. and the preamble to the repealing clause sets forth, that by the feverity of the penalty, the profecution of offenders had not

Exporting of wool, felony. that ' inten any y offen f. I, (B and i feitu

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been so effectually put in execution. But it doth not appear, why a reward for the informer or profecutor was not thought of at that time.

3. By the 12 C. 2. c. 32. No person shall export, nor pack or Pecuniary and load upon any horse, cart, or carriage, nor lay on board, with other penalties intent to export, any wool, wool fells, mortlings, shorlings, or and forfeitures, any yarn made of wool, or any wool flocks, or any fuller's earth, or fulling clay; on pain of forfeiting the same, and that every offender shall forfeit moreover 3 s. for every pound weight thereof.

(By the 7 & 8 W. c. 28. which, by the way, is a confused and ill penned act, another penalty is appointed, to wit, the forfeiture of fuch goods, and treble value, with treble costs; fo that it seemeth, the off nder may be prosecuted either for the wool

and 3 s. a pound, or for treble value with treble costs.)

And the owner of the ship, knowing the offence, shall forfeit all his interest in the ship and furniture. 12 C. 2. c. 32. f. 3. 7 & 8 W. c. 28. f. 8.

And the master and mariners, knowing the offence, and assisting thereunto, shall forfeit all their goods and chattels, and be

imprisoned three months. 12 C. 2. c. 32. f. 3.

And by the 6 G. c. 21. If the master, purser, or other person taking charge of the ship shall suffer any of the said goods, or any tobacco pipe clay, to be taken in from shore, to be carried beyond sea, he shall besides any former penalties, be imprisoned

fix months. J. 32.

But if any mafter, mate, or mariner, shall in fix months give an account to the commissioners of the customs, of such ship, and goods, and offenders, so as any may be convicted; he shall be indemnified, and shall have moreover three fourths of the penalties recovered, clear of charges, and the king shall have the other fourth, charges deducted. 12 G. 2 c. 21. f. 23.

And any merchant, or other person, offending herein, shall be difabled to require any debt or account belonging to him from

any factor or other. 12 C. 2 c. 32. f. 4.

And the faid offences may be tried either in the county where the goods were packed, loaden, or laid aboard, or where the offender is apprehended. 12 C. 2. c, 32. f. 5.

And the ship, if an alien, or person not inhabiting in England, be the owner or part owner thereof, shall be forfeited to the king.

12 C. 2. c. 32. f. 9.

And all persons aiding or affisting therein, being convicted in one year, shall suffer three months imprisonment. 7 & 8 W. c. 28. 1 10, 11. Provided, that the first three persons, who have been aiding or affifting (not being owners or part owners thereof) who shall inform any justice of the peace of such offence, whereby the penalties may be recovered, shall not suffer such penalty. f. 11.

And moreover, all fuch exportation shall be deemed a publick

13 & 14 C. 2. c. 18. / 11.

4. And no coverlids, waddings or other manufactures, flightly Exporting wool wrought, fo as they may be reduced to wool again; or mattraffes flightly wrought. or beds fluffed with combed wooi, or wool fit for combing, shall

### Woolien manufadure.

be exported from Great Britain or Ireland; on the like pain as for exporting wool. 12 G. 2. c. 21. f. g.

Exporting fuller's earth in the name of tobacco pipe clay.

Exporting wool to Jersey, Guernsey, &c.

c. And whereas fuller's earth, or fulling clay, is exported under colour of tobacco pipe clay, therefore no tobacco pipe clay shall be exported, on pain of 3 s. a pound. 136 14 C. z. c. 18. f. 8.

Exporting ful. 6. Nor thall any fuller's calling, or 10 W. c. 40. f. 2. ler's earth into into Ireland; on pain of 1 s. a pound. 9 & 10 W. c. 40. f. 2. 6. Nor shall any fuller's earth, or fcouring clay, be exported

7. Nevertheless, wool may be exported from Southampton, to Jersey, Guernsey, Sark, and Alderney, for the sole use of the inhabitants there; fo as the person shipping the same deliver to the customer of the port, a writing under the seal of the governor. of the illand, or his deputy, fetting forth that fuch person is authorized to export thither fuch a quantity, and that he hath entred into bond to land it there; and so as it exceed not in one year to Jerfey 4000 tods, Guernsey 2000, Alderney 400, and Sark 400; every tod not exceeding 32 pounds. 12 C. 2. c. 32. f. 12, 13, 14. 1 W. c. 32. f. 14.

Packing of wool. 8. And no wool, wool fells, mortlings, shorlings, wool flocks. worsted, bay or woollen yarn, shall be packed up in any box, barrel, cask, case, chest, or any other package, but only in packs of leather or packcloth; on which shall be marked on the outside the words WOOL or YARN, in large letters not less than three inches long: on pain of forfeiting the same, and the package, and 3's. for every pound weight, to be paid by the owner or

packer. 12 G. 2. c. 21. f. to.

g. And no wool, wool fells, mortlings, fhorlings, woollen yarn, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, shall be carried by land, but in the day timely only, namely, from Mar: 1. to Sep. 29. between four in the morning, and eight at night; and from Sep. 24. to Mar. 1. between seven in the morning, and five at night: on pain of forfeiting the fame or

the value. 13 & 14 C. 2. c. 18. f. 9.

Carrying wool from port to port, or by land

near the coast.

To be carried

only by day.

10. Every owner of wool, who shall carry, or cause to be carried any wool (wool fells, mortlings, shorlings, yarn made of wool, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, 5 G. c. 11. f. 14.) to any port or place on the fea coast, with intention to convey the same to any other port or place on the coaft, from whence the same may be carried off to foreign parts; shall first cause an entry thereof to be made at the port, from whence it is intended to be conveyed, containing the weight, mark, and number, before he carry the same within five miles of fuch port: on pain of forfeiting the same, and also the horses, carts, and other carriages; and also of suffering and forfeiting, as by the other laws in force against the exportation of wool. I W. c. 32. f. 2.—But this shall not hinder any person from carrying his wool home from the place of shearing, tho' it be within five miles of the fea; provided that in ten days after fhearing, and before he remove the wool, he do under his hand certify to the next officer of the customs, the true number of sleeces, and where it is housed; and do not remove the same, without certifying to fuch officer, under his hand, his intention fo to do, three days before. 1 W. c. 32. f. 3.

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And no wool, wool fells, mortlings, thorlings, wool flocks, worsted, bay or woollen yarn, worsted yarn, cruels, or wool slightly manufactured, shall be put on board any vessel, to be carried coastwise, or from one port to another in Great Britain or Ireland, without notice given to the officers of the port, and bond given for the landing thereof, and a licence taken from such officers for so doing; on pain of forfeiting the same, with the vessel and surniture; and the bond to be sued, if a certificate of landing the goods is not brought in six months. 12 G. 2. c. 12. J. 11.

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And to prevent collusive landing, none of the said goods, carried coastwife, shall be landed but in presence of the officers, and at the proper quays; on pain of forfeiting the same, or the value, and 3s. for every pound, to be paid by the owner. id. f. 13.

And all cocquets for carrying wool from any port, shall be written on paper, and not parchment (to prevent erasing), and signed by three officers of the port; and all certificates of landing the same again in any other port, shall be signed in like manner: And all such wool, both at shipping and landing, shall be weighed in the presence of the said officers; and the weight, marks, and number of such wool so shipped and landed, shall be expressed both in cocquet and certificate. 1 W. c. 32. f. 4.

And a register shall be kept at the custom house, London, of all the wool sent from port to port in this kingdom, the weight, number, ship, master's name, owner's name, and to whom configned; for the use of the commissioners. 1 W. c. 32. f. 11.

And officers not observing the directions of this act, shall be

deemed abettors of the exportation. id. f. 5.

In Kent and Suffex: Every owner of wool, within 10 miles of the fea, shall give an account in writing, in three days after shearing, of his number of fleeces, and where lodged, to the next officer of the customs; and the like notice, before he remove any part thereof, of the number of fleeces and weight, and the name and abode of the person to whom it is disposed, and the place whither intended to be carried; and shall take a certificate from the officer who first entred the same (paying 6 d.); on pain of forfeiting the wool, and also 3 s. for every pound thereof, as if it had been actually exported, 9 & 10 W. c. 40. S. 3.—And no person within 15 miles of the sea, in the said counties, shall buy any wool, before he enters into bond to the king, with fureties, that all the wool he shall buy, shall not be fold by him to any person within 15 miles of the sea; and if any wool be found carrying towards the fea fide, in the faid counties, unless it be first entred, and security given, it shall be forseited, and the offender shall also forfeit 3 s. a pound. id. f. 4. - And no wool removed from the place where it was first lodged after thearing, within ten miles, shall be lodged, after the first removing, within 15 miles of the fea in the faid counties; on pain of forfeiting all fuch wool, if found; but if carried away, the owner shall forfeit 3 s. a pound. id. f. 5. -- And every person that shall lay any wool within 15 miles of the fea, and not entred as aforefaid, all fuch wool shall be seized and forfeited; and every person claiming the fame (upon fuch feizure) shall give furery in the exche-

### Moollen manufacture.

quer, if he shall be cast upon trial, to pay treble costs, over and

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above the said penalties. id. f. 6.

And no wool, wool fells, mortlings, shorlings, woollen yarn, wool flocks, fuller's earth, or fcouring clay, shall be loaden on any horse or carriage, or carried by land, within 15 miles of the coast, but between sun rising and sun setting; on pain of forfeiting the same, and the horses and carriages. id. s. 8.

Hundred to for-

11. And the hundred next adjoining to the sea coasts, out of or seit treble value. thro' which the same is carried or exported, shall forfeit 20 1. if the wool fo carried out or exported shall be under the value of 10/. but if of greater value, then treble the value thereof, with treble costs; to be sued for within a year. 7 & 8 W. c. 28.

> The execution to be against any two of the inhabitants; and the fessions shall make an affessment to reimburse them, as in cases

> of robbery. J. 9. And any person compounding with the hundred for less, shall be imprisoned five years, and another person may prosecute. f. 13.

> And the owner of the wool, or of any other the commodities aforesaid, and every person aiding in carrying or exporting any of them out of the kingdom, shall answer such treble value to the faid inhabitants, as also treble costs; to be recovered by them in the name of the clerk of the peace, in any court of record at

Westminster. S. 10.

Riotous exportation.

12. By the 19 G. 2. c. 34. which hath continuance for seven years, &c. If any persons armed, to the number of three or more, shall be assembled to assist in the illegal exportation of wool, or in the carrying of wool in order to exportation, or in rescuing the same after seizure, or in rescuing an offender herein, or preventing his being apprehended, or shall be aiding in any the premisses; or if any person shall have his face disguised when passing with fuch wool, or shall forcibly hinder or affault any officer in feizing the fame, or dangerously wound any such in attempting to go on board any vessel, or shoot at or wound him when on board in execution of his office,—he shall be guilty of felony without benefit of clergy.

And if information, subscribed, and on oath, be made hereof before a justice of the peace; he shall forthwith certify the same under hand and feal, and return the information to a fecretary of state, who shall lay the same before the king in council; and the king thereon may make order, in two successive gazettes, for the offender to furrender in 40 days to some justice of the peace (who shall thereon commit him): The same order to be sent to the sheriff; who shall in 14 days after receipt, cause it to be proclaimed, between the hours of 10 and 12, on the market days, in two market towns near to the place where the offence was committed, and a copy thereof to be affixed in some publick place in fuch market towns. And if he shall not surrender, or escape after furrender, he shall likewise be guilty of felony without benefit of clergy.

But if he shall be taken before the time of surrender, he shall have a legal trial. tarigulast (stesist doel noque) sout one And And if after the time of furrender, any person shall knowingly harbour him, he shall, on prosecution within a year, be guilty of

felony, and be transported for seven years.

And if any officer in feizing the wool, or endeavouring to apprehend offenders, be beaten or killed, or the wool feized be rescued, the hundred shall answer damages, as in cases of robbery, not exceeding 40 l. for any beating, nor 200 l. for loss of the wool; and shall pay 100 l. to the executor or administrator of fuch person killed: Provided that notice of the offence be given to, or left at the house of some constable near the place, as speedily as conveniently may be, describing the offender, time, and place; and also, in four days, to two inhabitants near; and in eight days, oath be made before a justice, whether he knows the offender, and if he does, entring into recognizance to profecute; and in 20 days, like notice be given in the gazette; and 100 %. bond, with two fureties, be given before the sheriff, to the high constable, to pay costs, if cast; and provided, that an offender is not convicted in fix months; and that the action be commenced within a year.

And if any person shall be maimed or grievously wounded in apprehending such offender, he shall have moreover a further reward of 50% to be paid by the commissioners of the customs or

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And the executors or administrators of such person killed, shall have from them 100% over and above what is paid by the hundred.

And if any person shall take an offender advertised, and not surrendred, and bring him before a justice of the king's bench, or justice of the peace for London or Middlesex, (to be by them committed to Newgate), he shall receive 500 l. reward, from the said commissioners.

And an offender, not outlawed, apprehending an outlawed accomplice, shall have a pardon, and also the reward.

And an offender, not outlawed, convicting two accomplices not

outlawed, shall have a pardon, and 50% for each.

13. By the 26 G. 2. c. 11. It shall be lawful for any person, Exporting wood to export from any port in *Ireland*, any wood, or woodlen or bay out of Ireland yarn, wood fells, shortlings, mortlings, wood flocks, and worsted in particular.

yarn, to any port in Great Britain.

But no person shall export, or load, or ship, with intent to export, any wool, wool fells, shortlings, mortlings, or any woollen cloth or manufacture, out of *Ireland*, except it be into *Great Britain*; on pain of forseiting the same, and the ship, and also 500 l. and the master, mariners, and others assisting, 40 l. 10 8 11 W. c. 10. s. 1, 2.

But the first three persons, not being owners or part owners, who have been aiding in exporting the same, that shall inform any justice of the peace, whereby the penalties may be recovered; shall be

freed from all penalties for the same. 3 G. c. 21. f. 5.

And bond of double value of the goods shall be given to the officers of the customs, for every ship exporting the same, that they shall be landed in Great Britain. 10 & 11 W. c. 10. f. 5.

### Woollen manufacture.

And no wool, or any of the faid goods, shall be brought into Great Britain from Ireland, but in thips of the built of Great Britain or Ireland; on pain of forfeiting the goods, or the value,

together with the ship and furniture. 12 G. 2. c. 21. f. 6.

And to prevent collusive landing, none of the faid goods imported from Ireland, shall be landed but in presence of the officers, and at the proper quays; on pain of forfeiting the fame, or the value, and 3 s. for every pound, to be paid by the owner. id.

And the commissioners of the customs in Ireland, shall every fix months transmit to the commissioners of the customs in England, an account of wool exported, from whence, the quantity and weight, by whom, in what thip, where configned, names of the persons in England figning certificates of landing the same, with the dates of fuch certificates, and where landed, and the quantity and weight contained in the certificates: Which certificates shall not be obliterated or interlined, and shall be written on paper and not parchment. 7 & 8 W. c. 28. f. 6, 7.

And a register shall be kept at the custom house, London, of all the wool imported from Ireland, the weight, number, ship, master's commissioners. 1 W. c. 32. f. 11.

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Exporting wool

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14. The commissioners of the admiralty shall appoint 2 fifth rate ships, 2 fixth rates, and 8 armed sloops, constantly to cruise on the coasts, particularly between the north of Ireland and Scotland, with orders to feize all ships exporting wool to foreign parts. And all wool, and veffels fo feized shall be forfeited, and the wool lodged in the king's warehouse till condemned; and then the same after 21 days (together with the veffels so condemned) shall be fold by inch of candle, notice being first given at the custom house of the port where lodged, and on the Royal Exchange at London; one fourth of the produce to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king charges of profecution and condemnation being first paid out of the king's part.) And the commander neglecting his duty herein, shall forfeit his wages, and office, and be imprisoned fix months. 10 & 11 W. c. 10. f. 16, 17, 18.

And they shall also appoint 3 fixth rate ships, and 8 or more armed floops, to cruise on the British and Irish coasts, with orders for feizing all thips wherein any woollen manufactures are exported from Ireland; which ships and goods shall be forfeited, one fourth to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king, the charges being first paid out of the king's part. But if the feizure was at the information of any person, such informer shall have a fifth part, and the

residue be distributed as above. 5 G. 2. c. 21. J. 1, 2, 3. 15. No wool, or woollen manufactures, shall be exported from

any of the American colonies, on the like pain as from Ireland. nutactures, from 10 & 11 W. c. 10. f. 19.

16. Perfons infuring wool, and other the faid goods, to be Infuring wool to landed in foreign parts, and also persons agreeing to pay the money for fuch infuring, shall forfeit 500 %. to him who shall fue in any reign parts.

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court of record at Westminster, in the name of an officer of the customs, exist, or falt, or of the attorney general. 12 G, 2. 30, 32. 4 12.55

6. 21. 1. 20

And the infurer informing shall be discharged of his own penalty; and shall have the forfeiture of the other party; and shall also keep the insurance money paid to him: And the insured informing shall receive back his infurance money if paid; and if not paid, shall be indemnified from paying it; and shall be difcharged of his own penalty; and shall have the forfeiture of the other party. id. f. 31.

... And all infurances of wool, and woollen goods, and other the

goods before mentioned, shall be void. id. f. 33.

#### IV. Concerning cards for the manufacturing of wool.

No foreign wool cards, or card wyre, shall be imported, or used; nor shall any wyre be taken out of old cards, and put into new leather and boards, nor any cards made thereof be put to fale; on pain of forfeiting the same, or the value thereof if the same be not seized, half to the king, and half to him that shall feize or sue for the same in any court of record at Westminster, or within the county, city, or town corporate, where the offence shall be committed. 13 & 14 C. 2. c. 19.

### V. Concerning the deceitful working of woollen cloth.

1. No person shall put any hair, flocks, thrums, or yarn of lamb's wool, or other deceivable thing in any woollen cloth, on pain of forfeiting the same; and the person procuring such deceitful thing for that purpose, shall likewise forfeit the same; half to the finder, and half to the poor. 43 El. c. 10. f. 2, 12.

2. But in the case of broad cloath, by the 21 J. c. 18. the abovefaid penalty is mitigated; which enacteth, that no person shall put any flocks, noiles, thrums, hair, or other deceivable thing, in any broad cloth; on pain of 51. (and no greater penalty)

to the poor. f. 3.

And for the better discovery thereof, two justices, on information of any one of his knowledge or suspicion of such offence, may grant their warrant to call before them any person that shall in their discretions be thought fit to discover any such offence, and examine them on oath; and if it be found, by two witnesses, or confession, they shall certify the same under their hands and seals to the churchwardens and overfeers; who shall upon such certificate, and by warrant of fuch justices, levy the penalty by diffress: in default of diffress, to be committed to gaol till paid. f 4, 5.

And the fearchers shall set upon the same the word [faulty]; and no person shall search the same again, on pain of 5 1. to the party grieved, who shall sue for the same by bill, plaint, or in-

21 J. c. 18. f. 7. formation, at the fessions.

3. No clothier shall use, or cause to be used, any ends of yarn, wests, or other refuse of cloths, druggets, or other woollen goods, or goods mixed with wool (flocks and pinions only ex-FOL. II.

### Woollen manufadure.

cepted), by working the same up again into any sort of goods; on pain of 5 l. on conviction before two justices on information on oath, in three months after the offence; to be levied by distress; half to the informer, and half to the poor: for want of distress, to be committed to gaol not exceeding three months, or until satisfaction be made. But persons aggrieved may appeal to the next sessions, giving six days notice in writing; who may order costs and damages, and levy the same by distress, by their order or warrant; for want of distress, may commit the party to gaol, or to the house of correction not exceeding three kalendar months, or until satisfaction shall be made. And no certiorari shall lie on this act. 13 G. c. 23. f. 3, 4, 6.

And if any person shall be found collecting, buying, or carrying, in any bag or other convenience, any such ends of yarn, wests, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted); the constable may, by warrant of one justice, search such person, bag, or convenience, and if any the same be found, he shall carry the offender before a justice of the peace, and on conviction before him, by consession, or oath of one witness, he shall be deemed an incorrigible rogue, and liable to be punished as such. 13 G. c. 23. s. 8. 17 G. 2. c. 5. s. 4.

### VI. Concerning the fulling of cloth.

Every fuller, in his craft and occupation of fulling, rowing, or tayfeling of cloth, shall use tayfels, and no cards, deceitfully impairing the said cloth, on pain to yield to the party grieved his double damage: And every justice of the peace, mayor, master, warden, bailist, portreve, constable of hundred, and steward of leet in their respective liberties, may hear and determine the same, and commit the offender to the next gaol till payment. And also any person not grieved may make information to any such justice, mayor, master, warden, bailist, portreve, or steward; in which case the offender shall forfeit to the king, or to such person as shall be intitled to sines or amercements within their jurisdiction, 3s. 4d. and they may make process against the party in like manner as justices of the peace may do for sureties of the peace, without any fee to be taken for the execution of their offices in this behalf. A Ed. 4. c. 1. s. 6.

And no cloth, not fulled, shall be exported; on pain of forfeiting the same, half to the king, and half to him that will sue. 7 Ed. 4. c. 3.

The laws for preventing the exportation of fuller's earth, have been treated of under the article concerning the exportation of wool.

#### VII. Concerning the searching of cloth, and therein of the length, breadth, and weight thereof.

Yard and inch.

1. For the measuring of cloth, the statutes do generally provide, that the yard shall consist of a standard yard, and the breadth of a man's thumb besides; or 37 inches in the whole.

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Nar Hal 2. In every parish and hamlet where cloaths are made, two ju-Overseers of slices (and in corporations, the mayor, together with one justice cloth. of the shire next adjoining) shall once a year, or oftner, call before them, by precept or otherwise, 2, 4, 6, 8, or more, of the most honest, discreet, and able men of such place, and appoint them overseers for a year, or six months, or shorter time; and shall take them sworn, and bound in recognizance of 40 1. each, to do their best endeavour by all lawful ways and means to see the statutes observed retaing to the regulation of cloth. 3 5 4 Ed. 6. c. 2. f. 9. 39 El. c. 20. f. 4. 43 El. c. 10. f. 7.

And any person, without reasonable excuse, refusing to be

And any person, without reasonable excuse, resusing to be overseer, shall forfeit 5 l. half to the king, and half to such justices; and to remain in ward of the sheriff, till paid or secured.

39 El. c. 20. f. 5

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3. And the faid overfeers, or two of them, shall once a month Overfeers to at least, or so often as need shall require, go into the houses and search. rooms where the cloth shall be, and search, and try the same, by

water, weight, or any other way. 39 El. c. 20. f. 4.

And if any shall withhold cloth, or deny search; he shall, on conviction thereof at the sessions, forfeit for the first offence 10 l. for the second 20 l. for the third, being convicted by verdict and two witnesses, he shall stand upon the pillory in the next market town. 39 El. c. 20. f. 5.

Which said forfeitures shall be, one third to the overseers, one third to the king, and one third to the poor, as the sessions shall

appoint. id. f. 9.

4. And by the 4 J. c. 2. (which is a judicious act, as are many Length, breadth, in that king's reign) the feveral forts of cloth shall be in length and weight of and breadth at the water, when thoroughly wet, and in weight cloth, when scoured, thicked, milled, and fully dried, as followeth:

4.70.00	Yards	Quarters	Pounds
THE CAR STREET STATES		broad	
Long coloured broad cloth -	30 to 34	- 6 1 -	- 86
Long Worcester			
Long plunkets, azures, blues, and			
long whites ———	29 to 32	- 6 ½ -	- 80
Sorting cloths with a blue selvedge	23 to 26	6 -	- 64
Fine short Suffolks	23 to 26	$-6\frac{1}{2}$	- 64
Handiwarps	29 to 32	- 7 -	- 76
Broad plunkets, azures, blues, and		a constant	in the second
coloured fhort —	26 to 28	- 6 1 -	- 68
Coloured short	23 to 25	6 1 -	- 66
Half pieces of the same, called doz	ens, in pr	oportion.	
Broad lifted whites and reds			
Narrow lifted whites			
Narrow litted reds	25 to 28	$6\frac{1}{2}$	60
Fine cloth with plain lifts ———	20 to 22	6 1 -	7.2
Cloths having stopt lists ———	30 to 33	- 7 -	<del> 78</del>
Broads called Tauntons, Bridgewa-			1
ters, and Dunfters	12 to 13	-7 -	- 30
Narrow, ditto	24 to 25	-4 -	-33
Half cloth in proportion.	and Laaris		an Solid
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### Moollen manufadure.

		broad	Pounds weight
Devonshire kerseys, called dozens-	12 to 13		- 13
Check kerseys, straights, and plain			
		-4	
Ordinary penistones, or forest whites	12 to 13	- 5 1	- 28
Sorting penistones — —	13 to 14	- 6 ½	35
Kerseys called washers, or wash			
whites, half thicked -			- 17
The same quarter thicked -	18 to 19		- 17
Allowance in weight, for dying,			and fhear-

ing, shall be made, in broad cloth four pounds, long cloth five pounds, and so in proportion: 4  $\mathcal{F}$ . c. 2. f. 13.

And no liquid shall be used for increase of weight, on pain of 40s. half to the king, and half to the buyer that shall sue. id. f. 12.

5. And the maker, before fale, shall fet his seal of lead to the same, containing the length, and weight, to be tried by the water. 39 El. c. 20. f. 3.

6. And the overseer shall fix a feal of lead to the cloth, containing the length and weight, with this word [searched]. 39 El. c. 20. s. 6.

And he shall, on the penalty of his recognizance, set his christian and surname upon his seal; and no seal otherwise shall be good. 21 J. c. 18. f. 11.

And cloth, fealed by the overfeers, shall not be again tried but

by the buyer. 4 f. c. 2. s. 22.

And if they shall find any falle seal or mark, or the cloths to be stretched, they shall present the defaults at the next sessions.

And if any person shall set any seal to cloth, or take any seal away without warrant; he shall, on conviction thereof at such sessions, for the first offence forseit 10 l. for the second 20 l. and the pillory: The said forseitures to be one third to the overseers, one third to the king, and one third to the poor, as the sessions

7. And if any cloth be offered to be fold unfealed, the overfeers shall seize it, and present the same to the justices at the next

fessions. 39 El. c. 20. f. 4.

8. And for every of the said cloths abovenamed, which shall be of less length than the seal doth import, shall be forseited 6 s. 8 d. a yard, besides abatement of the price for what is wanting. 4 J. c. 2. f. 20.

For every yard of the faid cloths fold, above the length, shall be forfeited 10 s. id. f. 17.

For the same wanting breadth throughout, shall be forfeited 20s. wanting for half the length 10s. under half 5s. id. f. 19.

And for every pound wanting above two pounds in weight, shall be forfeited 10 s. id. f. 18.

9. And by the 21 J. c. 13. f. 12. All penalties and forfeitures whatfoever, for want of length, breadth, and weight, by this or any former act, shall be distributed into three equal parts; one third to the overfeers and fearchers finding and certifying the defeat.

Maker's feal.

Overfeer's feal.

Cloth fold un-

Cloths deficient in length, breadth, or weight.

Distribution of torfeigures.

fault, to plaint, 10.

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grein orch fault, to be recovered by them in fessions, by action of debt, bill, plaint, or information, and two thirds to the poor, by diffress.

10. Measure and weight of cloths by former acts, not altered Measure and

by the 4 J. c. 2. seem to be as follows:

By the 3 J. c. 16. Ordinary kersey shall not exceed 24 yards in length, and shall weigh one pound and three ounces a yard: Sorting kersey shall not exceed 24 yards in length, and shall weigh one pound three ounces and a half a yard: On pain of 5 s. for every yard above, and 2 s. for every pound wanting (to be levied and distributed in like manner.)

By the 3 J. c. 17. No penalty shall be, for want of a seal on Welsh cottons; and they shall not be searched or tried but by the

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By the 8 El. c. 12. Frizes and rugs shall be from 35 to 37 yards long, three quarters of a yard within a nail broad, and 44 pounds weight: (On pain of 20 s. for offending in length or breadth, by 5 & 6 Ed. 6. c. 6. J. 25. And for every pound wanting, above four pounds, 5s. by 4 & 5 P. & M. c. 5. f. 15.)

Moreover, by the 7 J. c. 16. Cogware, Kendals, coarse cottons, and Carptmeals, made in Cumberland, Westmorland, or in Carptmeale, Hawkeshed, and Broughton in Lancashire, whereof the dozen shall not exceed the price of 13s. 4 d. shall not be searched nor fealed, but may be made in fuch fort as may best please the buyer.

#### VIII. Concerning the dying of cloth.

1. For the encouragement of dreffing and dying of cloth, no person shall export any white woollen broad cloth, until he have paid duty of 5 s. for every fuch cloth; on pain of forfeiting the same, or the value thereof, half to the king, and half to him that shall seize, inform, or sue. 6 An. c. 8.

2. No wool shall be boiled with gauls, bark of trees, or faw dust, to be converted into broad cloth or kersey; on pain of forfeiting the same, or the value thereof, half to the king, and half

to him that shall sue. 5 & 6 Ed. 6. c. 6. f. 52.

3. No person shall dye any wool to be converted into cloth, called ruffets, musters, marbles, greys, roys, and such like colours, or into hats or caps; unless it be perfectly woaded, boiled, and maddered: on pain of 40s. for so much thereof as will serve for the making of every fuch cloth; half to the king, and half to the overfeer who shall discover and sue in any court of record, or before the justices of peace. And if the overseer will not sue in half a year, then the faid moiety to any other person who will fue in another half year. 3 & 4 Ed. 6. c. 2. s. 5, 10, 11.

4. No person shall dye with brasel, to make a salse colour in cloth or wool, hats, or caps; on pain of 20 s. in like manner.

3 5 4 Ed. 6. c. 2. f. 5.

5. No person shall dye any woollen cloths, as browns, blues, pewks, tawnies, or violets; except the same be perfectly boiled, greined, or maddered upon the woad, and shot with good cork or orchal; on pain of 20 s. in like manner. 3 & 4 Ed. 6. c. 2. J. 4.

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6. By the 13 G. c. 24. If any person shall dye any bays, or other woollen goods, for mather blacks, and not being dyed throughout with woad, indico, and mather only; he shall (being convicted thereof in 40 days) forfeit for every long Bocking bays containing 70 yards, 44s. Colchefter or short bays of 35 yards 22.5. and so in proportion. If the penalty is above 5 1. it shall be recovered in the courts at Westminster; if under 5 1. before two justices (not interested) by oath of one witness, half to the informer, and half to the company of dyers, if in London; if out of London, the whole to the informer and profecutor. And if the penalties under 5 1. are not paid in 20 days after conviction, then to be levied by the constable by warrant of fuch justices by distress; for want of distress, to be committed to the house of correction, to be kept to hard labour not exceeding three months. But perfons aggrieved by the justices may appeal to the next fessions, who may allow costs. And the faid mathered blacks shall be marked with a red rose and a blue rose; and if any person counterfeit the same, he shall forfeit 4 1. in like manner.

And if any person shall dye for wooded black any woollen goods, the same not being wooded, he shall forfeit in like manner for every cloth of 44 yards 40 s. bays of 70 yards 30 s. Colchester or short bays of 35 yards 12 s. perpetuana or stuff 4 s. and so in proportion. And the said wooded blacks shall be marked with a blue rose only: And if any person shall counterseit the same, he

shall forfeit 41. in like manner.

And if any person shall use logwood in dying blue, he shall forseit in like manner for cloth of 44 yards 40 s. Bocking bays of 70 yards 22 s. Colchester or short bays of 35 yards 12 s. perpetuana or suff of 24 yards 4 s. and for other woollen goods in proportion.

And the dyers within London shall be subject to the inspection of the company; — out of the limits thereof, the quarter sessions may appoint searchers; who may (with the constable's affistance) search in the day time; and persons resusing such search shall forfeit 101. in like manner.

#### IX. Concerning tenters, and the stretching of cloth.

Tenter.

1. No person shall have or use any tenter, with a lower bar, pin, ring, or other engine or device; any wrinch, ring head, growm, rope, or other engine, to stretch any rough and unwrought woollen cloth: on pain of 20 l. half to the king, and half to him that shall sue. 43 El. c. 10. f. 2.

Stretching.

2. No person shall stretch (or sell the same stretched) any wrought woollen broad cloth above one yard in length, and half a quarter in breadth; or half cloth above half a yard in length, and half a quarter in breadth; or kersey, cotton, dozen, penssone, frize, rugg, above half a yard in length, and one nail in breadth; on pain of forseiting the same, half to the overseer or informer, and half to the poor. 43 El. c. 10. f. 3, 12.

3. If any person shall feloniously cut and take, steal, or carry away, any cloth or other woollen manufacture from the rack or tenter in the night time, he shall be guilty of felony without benefit of clergy. 22 C, 2. c. 5. f. 3.

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But because it is often difficult to prove the owner's property in the cloth, therefore by the 15 G. 2. c. 27. it is enacted, that if any cloth or woollen goods on the tenters, or woollen yarn or wool left out to dry, shall be stolen in the night, any justice on complaint made in ten days by the owner, may iffue his warrant to any peace officer, in the day time to enter into, and fearch the houses, outhouses, yards, gardens, or other places belonging to the houses of every person whom such owner shall upon his oath declare to fuch justice he suspects to have stolen, taken away, or received the same; and if the officer shall find any such goods which from the oath of such person he shall have reason to suspect to be stolen, he shall apprehend the person in whose custody or possession the same shall be found, and carry him before a justice; and if he shall not give a satisfactory account how he came by the fame, or in a convenient time to be fet by the justice produce the party of whom he had the same, or a credible witness to depose on oath his property therein, he shall be convicted of stealing such goods; and shall for the first offence forfeit to the owner treble value, and in default of payment thereof in the time appointed by fuch justice, he shall issue his warrant to levy the same by distress and fale; and in default of diffress, shall commit him to the common gaol where he shall be apprehended, for three months, or till paid; for the second offence, treble value, and fix months imprisonment; for the third offence, such justice shall commit him to the affizes, and if he shall be there convicted in like manner, he shall be guilty of felony, and transported for seven years. But persons aggrieved (except on the third conviction) may appeal to the next general quarter sessions, whose order therein shall be final. But nevertheless, this shall not alter any former law in force, for slealing or receiving fuch cloth, or goods, except where the proof is laid on the offender.

### X. Concerning the dreffing of cloth.

1. No woollen cloth shall be exported, till it be barbed, rowed, and shorn; on pain of forfeiting the same, half to the king, and half to him that will sue. 3 H. 7. c. 11.

2. No person shall use iron cards, or pickards, in rowing of cloth; on pain of forseiting the cards, and 205 haif to the king, and half to the overseer who shall discover and sue in any court of record, or before the justices of the peace. And if the overseer will not sue in half a year, then the said moiety to any other person who will sue in another half year. 3 & 4 Ed. 6. c. 2. f. 7, 10, 11.

3. No person shall put any flocks, chalk, flour, or starch, or other deceivable thing on cloth; on pain of 40 s. in like manner.

3 & 4 Ed. 6. c. 2. f. 6.

4. There shall be no rowing or raising of cloth, with oil, grease, or any liquid, but only on the edge of the shears with semet or oils; on pain of 13s. 4d. half to the king, and half to the buyer that shall sue. 4 f. c. 2. f. 10.

5. There shall be no cutting of wool from the backsides of cloth, but with shears only; on like pain of 13 s. 4 d. 4 f. c. 2. f. 11.

### Moollen manufadure.

6. No liquid shall be used on the side of cloth, to make it look better than the midst; on like pain of 13s. 4d. 4 J. c. 2. s. 12.

7. The fides shall not be raised, fulled, rowed, or shorn, better han the middle; on like pain of 125 Ad. A. 7. 6.2. 6.10.

than the middle; on like pain of 13s. 4d. 4 J. c. 2. s. 10.

8. No person shall press cloth with a hot press; on pain of forfeiting the same, or the value, half to the king, and half to him that shall sue. 5 & 6 Ed. 6. c. 6. s. 52.

9. And pressing of cloth with hot boards shall be punished with like forseiture, as pressing it with a hot press. 21 J. c. 18. s. 11.

#### XI. Concerning mixed or medley broad cloth in particular.

Mixed or medley broad cloth.

It is provided by the 10 An. c. 16. and 1 G. ft. 2. c. 15. that nothing therein shall extend to any cloth made in Yorkshire; By which acts it is also further provided as follows:

Fulling miller to measure.

The fulling miller shall take an oath before a justice dwelling near such mill, that he will well and truly perform the measuring all mixed or medley broad cloth fulled at his mill.

And feal.

In order to which, he shall have a table 12 foot long; and three foot broad, whereon the cloth shall be doubled and laid plain, with the length of a yard marked thereon; on which he shall measure the same, when fulled and wet; and shall fix and rivet at the head end thereof, a seal of lead (to be furnished by the clothier), which shall be marked with a crown on the rivet: on which seal he shall stamp his name, and the length and breadth of the cloth; for which he shall have one penny.

And enter the

He shall also enter in a book, the marks, fort, number, length, and breadth thereof.

And if he shall refuse to take such oath, or to fix such seal, or to make such entry; he shall, on conviction in 40 days, before one justice not interested, on oath of witness, forseit 201. to the poor of the parish or place, charges of conviction first deducted. If not paid in 30 days after conviction, to be levied by distress. For want of distress, to be committed to gaol or house of correction, to be kept to hard labour for three kalendar months. Persons aggrieved may appeal to the next sessions, who may allow costs.

Counterfeiting the feal.

And if any person shall take off, deface, counterfeit, or alter, such seal, or add any other; he shall, in like manner, forfeit 201.

Selling before fealed.

And no person shall expose to sale any mixed or medley broad cloth, before it be so sealed; on pain of forfeiting one sixth part of the cloth, to the poor, in like manner: or, if it is in London, to the benefit of Christ's hospital.

Buyer may meafure again. If the buyer is not fatisfied with the measure, he may have it measured again in the water, in eight days after delivery, giving two days notice to the seller or his factor: In which case, each party shall chuse a measurer; and if those two disagree, they may chuse a third: and if he shall refuse, it shall be measured, if in London, by the keeper of Blackwell-ball, who shall be sworn before a justice to measure it truly: if not in London, then if the two measurers disagree, or appoint not a third person, the chief magistrate shall appoint and swear one.

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But if the seller doth not then appear, or doth not then appoint a measurer, the keeper of Blackwell hall shall proceed to measure it.

And the measurer shall be paid by the buyer 6 d. for each piece. And he shall make a certificate of the true measure thereof.

And if on such his measuring there appear a less quantity in length, or in the greatest part of the breadth, than is mentioned in the seal, the owner or seller shall forfeit the sixth part of the value of such cloth; to be paid by the buyer, and deducted out of the price, on the measurer's making such certificate, and making oath thereof before a justice, of which the justice shall give him a cer-

And the said certificate shall in ten days be siled with the clerk of the peace, for which he shall have 1 s. which certificate so siled, shall be a sufficient conviction. And an attested copy of such certificate (for which the clerk of the peace shall likewise have 1 s.) shall be a sufficient authority to the owner or seller, to demand of the milman the forseitures deducted out of the price. Which is he shall resuse to pay, it shall be leviad by distress, by warrant of one justice; and for want of distress, to be committed to gaol or

house of correction for three months.

And by the 13 G. c. 23. Every owner of tenters for mixed or Tenters. medley broad cloth, in the counties of Gloucester, Wilts, and Somerstet, shall measure the tenter, and mark in figures the length of yards, beginning at number I, and so continuing to the end, upon the top bar, and on the foreside thereof; on pain of 5 l. on conviction before two justices, on information on oath, in 3 months after the offence; to be levied by distress, half to the informer, and half to the poor: for want of distress, to be committed to gaol not exceeding three months, or until satisfaction be made.

And the justices of the said counties, at Easter sessions yearly, Inspectors. shall chuse inspectors; who, before they enter upon their office, shall take this oath; I A. B. do swear, that I will well and truly execute the office of an inspector of mixed or medley woollen broad cloth within this county, according to the laws and statutes of this realm, and according to the best of my skill and knowledge: So help me god.

And they shall inspect the mills, shops, houses, and tenter grounds of persons concerned in milling and manufacturing mixed or medley woollen broad cloth; and shall measure the cloth on the tenter; and such inspector shall stamp his name on a lead seal, to be furnished by the maker of the cloth, and affix the same on the head end of such cloth, and shall register in a book the clothier's, milman's, or other person's name, and the number, length, and breadth, of every such cloth; and shall at every quarter sessions give in a copy of such register, with an account of forseitures levied.

The milman fending home fuch cloth before inspected, shall

forfeit 40 s. in like manner.

Persons refusing entrance to

Persons resusing entrance to the inspector, shall forfeit 10% in like manner.

And the inspector acting against his oath, shall forfeit 20 l. in like manner.

### Moollen manufadure?

And the faid justices shall allow a falary to each inspector, not exceeding 30 l. a year: for the raifing of which, every maker shall pay to the inspector 2 d. for every such cloth, before they are fent from the mill; who shall pay the same, every 3 months or oftner, to the county treasurer, to be applied by the sessions towards fuch falaries.

#### XII. Concerning the Yorkshire manufacture in particular.

Yorkshire mamufacture.

1. We come next to confider the Yorkspire manufacture, the great support of the inhabitants of the barren mountains in the North, in taking off large quantities of their coarse wool. During the late war, this manufacture did draw also much wool out of Scotland, which in times of peace finds some other vent; perhaps into France; which it cannot so well do, during a French So that contrary to the maxims of commerce, the Northern counties flourish most in time of war; because wool then may be fold for near three times the price that it bears in time of peace, It were to be wished, that some method might be found effectual. to preserve unto us that valuable branch of the British commerce, and to prevent foreigners from forestalling us in that trade, of which we furnish the necessary materials.

2. Divers acts of parliament have been obtained, at the expence of the clothiers, for the regulation and encouragement of

this manufacture.

These acts are in all six: five of which relate all to the same fubject; each succeeding act explaining the former. And the other act stands alone by it felf.

The substance of the said five acts, when brought together,

feemeth to be as follows:

In the first place, as the punishments, and the methods of inflicting them, are not the same on the said several acts, it is proper, in order to avoid frequent repetitions, to premise the several penalties on the several acts distinctly; that so, when the reader shall observe what act createth any of the following offences, he may by casting his eye backward, see presently the general method of profecution upon that act. And, in the progress, where there is any particular punishment directed for any particular offence, it is thought proper to annex that punishment to that particular offence.

(1) 7 An. c. 13. The penalties on this act must be inflicted in 21 days after the offence is committed or discovered; on conviction before one justice (not being a dealer in the woollen manufacture) on the oath of one witness; if not paid in seven days, to be levied by the constable by warrant of distress from such justice; and to be distributed, half to the informer, and half to the poor of the township or place. For want of distress, to be committed to the house of correction or gaol, to be kept to hard labour not exceeding one month. But an appeal lies to the next fessions, who may allow costs. 7 An. c. 13. f. 5, 6, 8. 1 G. ft. 2. c. 15. f. 16.

(2) 1 G. A. 2. c. 15. The same.

(3) 11 G.

Penalties.

(3) 11 G. c. 24. Information of all offences on this act shall be given on oath in 20 days after the offence is discovered; and the conviction to be before one justice (not being a dealer in the woollen manufacture) on the oath of one witness (notice of the charge being first given to the party); If not paid in ten days after notice given of the conviction, at the offender's last place of abode, and he do not appeal, the same to be levied by the constable by warrant of distress from such justice: To be distributed, half to the informer, and half to the poor. For want of distress, to be committed to the house of correction to be kept to hard labour for six months. But an appeal (on giving ten days notice to the informer) lies to the next sessions, who may allow costs. f. 18, 19.

(4) 7 G. 2. c. 25. All informations of offences on this act, shall be made in five days after discovery of the offence, and not otherwise. The conviction to be before one justice (not being a dealer in the woollen manufacture) on oath of one witness. If not paid in ten days after notice given of the conviction at the offender's last place of abode, and he do not appeal, the same to be levied by the constable, by warrant of distress from any such justice: To be distributed, half to the informer, and half to the treasurer towards the searchers salaries, and other expences of carrying these acts into execution. For want of distress, to be committed to the house of correction to hard labour not exceeding one month. But an appeal (on giving ten days notice to the informer) lies to the next sessions, who may allow costs. 7 G. 2. c. 25. f. 2, 13, 16.

14 G. 2. c. 35. f. 11. (5) 14 G. 2. c. 35. The fame.

3. The clothier shall, at the time of making the cloth, weave or Maker's mark. few into the head of it, in letters at length, his name and place of abode; on pain that if he shall offer the same to sale so unmarked, he shall forfeit 5 l. for each piece. 11 G. 2 c. 24. f. 8.

And if any person shall counterfeit or alter such mark, before it is sold; the offender, and also the person in whose custody it is

found, shall forfeit 5 l. id.

4. The fulling miller shall not full in one stock at one time, Fulling.

more than one whole broad cloth; on pain of 20 s. 7 An. c. 13. f. 4.

5. And every person within 14 days after he is employed in Fulling miller to the office of a fulling miller, shall make oath before a justice, that measure and seal. he will well and truly persorm the measuring and stamping of the cloth sulled at his mill: which justice shall give him a certificate of such oath being taken. Which if he shall omit to do, he shall for seit 5/2 14 6/2 6/25 6/5 14 6/4

forfeit 5 l. 14 G. 2. c. 35. f. 5. 11 G. c. 24. f. 4.

6. And moreover, the justices (not being dealers in woollen Searchers to be cloth) may at Easter setting ferfions yearly, appoint other persons to be appointed. measurers or searchers at the said mills, who follow or have been brought up there in making or dressing woollen broad cloth; and may appoint them salaries, not exceeding 25 l. a year. And on such searcher's death, or incapacity, one such justice, dwelling near, may appoint another till Easter sessions, to be there confirmed, or another appointed.

14 G. 2. c. 35. f. 1, 2.

7. Which faid measurer or searcher shall make the like oath Searcher's oath, before a justice, that he will well and truly perform the measuring

and

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### Moollen manufadure.

and flamping of the faid cloth: which justice shall give him a certificate of such oath being taken. 14 G. 2. c. 35. f. 5.

fure.

8. The faid measurer or searcher, so stationed at the fulling mill, shall together with the said milman, measure all the whole cloths and ends there milled, such as are streamed or washed in the goit or mill stream, within fix, and not fooner than four hours after; such as are not streamed and washed, shall be measured in four hours after they come out of the stock. 14 G. 2. c. 35. f. 3.

Length and breadth.

9. And the length and breadth thereof shall be as follows: Every woollen broad cloth, whether it be an end or half cloth, or a long or whole cloth, being well scoured and fully milled, shall be five quarters and an half broad within the lifts, in the water, being fully wet; and the half cloth shall be not above 24 yards long, and the whole cloth not above 48 yards long. 11 G.c. 24. f. 1.

And if any whole or half cloth shall, when milled, and having fo laid four hours, be under one yard and 13 1 inches broad, for above one fifth part of the length thereof; the maker shall forfeit for the first inch 2s. 6d. for the second 5s. and for every other inch 15 s. half to the informer, and half to the treasurer, charges of profecution and conviction first deducted. 14 G. 2. c. 35. f. 8.

And whole thick kerseys, whole thick plains, huggabags, or broken quilled kerseys, shall be not under 18 yards long, and 3 1 quarters broad, when wet: on pain that the person offering the same to sale contrary hereto, shall forfeit for every inch wanting in breadth, and every half yard wanting in length 20 s. 1 G.

ft. 2. c. 15. f. 15.

Sealing after it is meatured.

10. And the milman shall affix a seal (to be furnished by the clothier) at one end; and the measurer another at the other end; and shall rivet the same; and shall each stamp his name, or part of it, on the seal or rivet, and the length and breadth in figures. 14 G. z. c. 35. f. 6.

Penalty of taking away before measuring and fealing.

11. And if the maker take away his cloth from the mill, before it be measured and stamped, he shall, on conviction on the oath of such milman, or measurer, forfeit 201. 14 G. 2. c. 35. f. 4.

Or if he offer the same to sale unsealed, he shall forfeit 5 1. for

each piece. 11 G. c. 24. f. 8.

Entry to be 12. And immediately, the fearcher shall enter in a book to be made after meaprovided by the treasurer, and kept at the mill, the maker's name foring and fealand dwelling, the colour, fort, length, and breadth. 14 G. 2. c. 35. J. 6.

Pay for meafuring and fealing.

ing.

13. For which measuring and sealing, the owner shall pay to the milman 4 d. for every whole or long cloth, and 2 d. for every end or half cloth; three fourths to go to the treasurer towards the fearchers salaries and other uses of the acts, and one fourth to the milman. 14 G. 2. c. 35. f. 6.

And when the expences of the acts shall be discharged, the justices in Easter sessions may make order for increasing or diminishing the duties for measuring and sealing; so as they never exceed 4 d. for a whole, and 2 d. for a half cloth. id. f. 19.

Penalty on the fulling miller.

14. Generally, the fulling miller omitting his duty, shall forfeit 11 G. 2. c. 24 f. 5.

On counterfeiting the feal.

15. And if any person shall counterfeit or alter the seal, he shall forfeit 5 1. 11 G. c. 24. f. 4.

16. If the owner shall, in four hours after the cloth is brought On wrong meahome, find on measuring the same, that it is of less length, or of suring. less breadth, for above one fifth part of the length, than is expressed by the stamp, and shall, before it is offered to sale, make oath thereof before such justice; then the milman and fearcher, being convicted by such oath, shall jointly forfeit for the first inch in breadth or half yard in length falling short of the stamp 5s. and for every other inch in breadth and half yard in length 10 s. half to the informer, and half to the treasurer (charges of prosecution first deducted). And the treasurer may deduct the measurer's penalty out of his falary. 14 G. 2. c. 35. f. 11, 12.

17. And the justices (not dealing in cloth) shall at Easter sef Other searchers sons yearly, appoint other fearchers, who follow or have been to be chosen. brought up there in the trade of making or dreffing woollen broad cloth; and allow each a falary not exceeding 15 /. a year; who shall make oath, that they will well and truly execute the office of fearchers of broad woollen cloth, according to the laws of the realm, and to the best of their knowledge. 11 G. c. 24. f. 12.

7 G. 2. c. 25. f. 14.

18. And they may fearch (more especially when required un- Who shall fearch der the hand of any such justice), and measure suspected cloth; and measure. and persons hindring, shall forfeit 10 l. 11 G. c. 24. f. 13.

But they shall not fearch cloth packed for exportation, provided the merchant or packer shall swear before a justice, that it was, when demanded to be produced, dressed or packed up to be fent away. 14 G. 2. c. 35. f. 15.

And if such searcher act against his oath, he shall forfeit 20 1.

11 G. c. 24. f. 14.

19. And if any buyer shall suspect the cloth to want length or Buyer may mesbreadth, he may in 14 days after delivery, put it in water four fue again. hours, and cause it to be measured by a sworn searcher; and if found less in length or breadth than is marked on the seals, the seller shall forseit 20 s. 7 G. 2. c. 25. s. 2.

But it is provided afterwards in the same act, that no more than 10 s. shall be forfeited for the first inch wanting in breadth, and 15 s. for the second, and 20 s. for every other inch. f. 4.

And that white broads shall not forfeit for want of breadth, after put in hot water or other liquors to be dyed. f. 5.

20. And the offender may, in five days after notice of the Saller may view offence, view the cloth; and if the buyer refuse, the prosecution it.

shall cease. 7 G. 2. c. 25. s. 3.

21. And by a former act it is provided, that the feller's pe Milman to annalty shall be repaid by the milman; and on refusal, to be levied swer over for by distress; and that the buyer may in three days return it to the wrong measure. feller, who shall pay back the price and charges (to be ascertained on oath before a justice); and on refusal, to be distrained of. G. c. 24. f. 5. 7.

22. Cloths damaged and shortned by accident, shall by a Cloths damaged searcher be measured and sealed again. 14 G. 2. c. 35 f. 10. to be measured 23. The owners of tenters shall mark, on the foreside of the again.

top bar, in figures, the length of yards on each tenter; beginning with number 1, and so on; on pain of 5 %. 11 G. c. 24. f. 11. 24. And

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### Moollen manufacture.

Swetching.

24. And if any person shall stretch any such cloth more than one yard in 20 in length, or more than one inch in a quarter of a yard in breadth, and so in proportion, beyond the Measure on the seal; he shall forfeit 20 s, for every half yard in length, and inch in breadth. 7 G. 2. c. 25. f. 12.
25. Cards with wire or other metal shall not be used in dressing

Cards in dreffing.

cloth, on pain of 50 l. 11 G. c. 24. f. 18.

Stretching in

26. And the cloth dreffer stretching the merchant's cloth, or altering the feals, shall repay to him the penalties. 11 G. c. 24. f. 16.

dreffing. Dreffer's stamp.

27. And he shall dress the same in all parts alike; and shall at the head end affix and rivet a feal of lead, and stamp thereon his

name at length; on pain of 5 /. 11 G. c. 24. f. 10.

What hath been faid may suffice for a general view of so perplexed a matter, as must be necessarily supposed in five pretty long acts of parliament, all unrepealed, and every subsequent act explaining and altering the former: A more exact knowledge of any particular, must be laboured for in the acts themselves.

The act which stands alone, is concerning narrow woollen cloths only, not being white kerseys, nor half thicks; and is as

follows:

28. The justices in Easter sessions yearly shall appoint searchers, fuch as have ferved apprenticeships to the trade of making narrow cloth, or have exercised such trade three years; and appoint them falaries: Who shall he sworn before a justice, well and truly to execute the office of fearching fuch narrow woollen cloth. And in case of the death or sickness or other disability of a searcher; one justice, living near, may appoint another till the next fessions, to be there confirmed, or another appointed. 11 G. 2. c. 28. f. 3, 4.

Which faid cloth may be made of what length and breadth the

maker shall think fit. J. 13.

And he shall weave or set in the head of every piece, the first letters of his name; on pain, on conviction in one month, of forfeiting 20s. S. I.

And the same shall be measured when wet at the mill, both by the milman and the fearcher, who shall measure it down the middle for the length, and within the lifts for the breadth. f. 1.

And the milman shall rivet at one end a seal of lead, to be furnished by the clothier, and shall stamp his name thereon at length, and the length and breadth in figures: And the fearcher shall also affix a feal of lead at the other end, with his name, with the length and breadth in like manner. f. 1.

And they both shall keep books, wherein they shall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth; and shall suffer the buyer to inspect the same.

The miller, or fearcher offending herein, shall, on conviction in eight days after the cloth is removed from the mill, forfeit 5 1.

And if any person shall counterfeit the seal or mark, he shall

(on conviction in one month) forfeit 40 s. f. 7.

And a fum not exceeding 3 d. for each cloth, shall be paid by the owner before it is carried from the mill, to such person as the justiges

Narrows.

justices at Easter sessions shall appoint, to pay the searchers salaries, and other expences of the act: And the person so appointed may detain the cloth at the mill till paid; and if not paid in eight days after demand, such person may sell the same, and detain the money, rendring the overplus on demand. f. 8, 9.

And the owner shall measure the cloth when brought from the mill, before it is set on the tenter; and if it is less than the stamp, or by lying wet is become less, he shall carry it to the milman and searcher to be restamped, on pain of 5 s. on conviction in

one month after the offence. 1.5.

The owner may stretch the same one inch in a yard in length, and two inches in every three quarters in breadth, and so in proportion: but if any person stretch it surther, he shall forseit for the first half yard in length, or first inch in breadth overstretched 10s. and for every other half yard in length, or half inch in breadth 20s. s. s. 6.6.

The conviction to be before one justice, not being a dealer in cloth, on oath of one witness, reasonable notice being first given

to the person accused. f. 10.

The forfeitures (if not paid in ten days after notice of the conviction given at the offender's last place of abode, and if he shall not appeal) to be levied by the constable by warrant of a justice by distress, rendring the overplus on demand, charges of distress and sale being first deducted: To be distributed (after deducting the charges of conviction) half to the informer, and half to the treasurer for the expences of carrying the act into execution: For want of distress, to be committed to the house of correction to hard labour for one month. s. 10.

Persons aggrieved may appeal to the next quarter sessions to be held after 14 days from the conviction, giving ten days notice to the informer. And the justices there, may award costs. f. 12.

### XIII. Concerning burying of the dead in woollen cloth.

1. By the 30 C. 2. c. 3. (which is required to be given in charge at the affizes and fessions) no corps of any person (except those who shall die of the plague) shall be buried in any shirt, shift, sheet, or shroud, or any thing whatsoever made or mingled with slax, hemp, silk, hair, gold, or silver, or in any stuff or thing, other than what is made of sheep's wool only, or be put into any cossin lined or faced with any sort of cloth or sluff, or any other thing whatsoever, that is made of any material, but sheep's wool only. f. 3, 9. 10.

2. And the ministers shall take an exact account, and keep a register book, to be provided at the charge of the parish, and make a true entry therein of all persons buried in their respective parishes or precincts, or in such common burial places as their re-

spective parishioners are usually buried. f. 4, 7.

3. Within eight days after the interment, some relation of the party deceased, or other credible person, shall cause an assidavit (A) in writing to be made under the hands and seals of two or more credible witnesses, setting forth that such deceased person

### Moollen manufadure.

was not put in, wrapt, or wound up, or buried, in any shirt, shift, sheet, or shroud, made or mingled with flax, hemp, filk, hair, gold, or filver, or other than what is made of sheep's wool only, or in any coffin lined or faced with any cloth, fluff, or any other thing whatfoever, made or mingled with flax, hemp; filk, hair, gold, or filver, or any other material but sheep's wool only : And shall bring the same, and make oath thereof, before the mayor, or a justice of the peace, or master of chancery [and if no justice shall reside or be to be found in the parish where the party is interred, then to any parson, vicar, or curate, in any other parish within the county, 32 C. 2. c. 1.] who shall administer the oath, and attest the same under their hands upon such affidavit, gratis. J. 4, 5.

4. And shall (within eight days as aforesaid) bring the same fo figned and attested, to the minister; who shall enter the same in

the register. 1.4, 7.
5. And if no relation of the party buried, or other person, shall bring such assidavit, as aforesaid, Then the goods and chattels of the party deceased shall be liable to the forfeiture of 5 %. to be levied by diffress, by warrant of the chief magistrate in any town corporate, or of any justice of the peace: Or in default thereof, by like diffrefs of the goods of the person in whose house the party died; or of any that had a hand in putting such person into any shirt, shift, sheet, shroud, or cossin, or did order or dispose the doing thereof; and in case such person were a fer-Yant and died in the family of his or her mafter or mistress, the fame shall be levied on the goods of such master or mistres; and if such person died in the family of his or her father or mother. then the same shall be levied on the goods of his or her father or mother: Which faid forfeiture shall be levied, paid, and allowed out of the estate of the said deceased person, before any statute, judgment, debt, legacy, or other duty whatsoever. s. 4.

6. And in fuch case, where no affidavit shall be brought in eight days as aforesaid, to the minister where the party was buried, he shall forthwith give, or cause notice (B) thereof to be given in writing under his hand, to the churchwardens or overfeers; on pain of 5 l. with full costs (provided the suit be commenced in fix months), one fourth to the king, two fourths to the poor where fuch person offending dwells, and one fourth to him that shall in-

form and sue. f. 5, 6.

And moreover, where no such affidavit shall be brought to him within such time, he shall enter a memorial thereof in the said registry, against the name of the party interred, and of the time when he certified the fame to the churchwardens or overfeers.

7. The faid churchwardens or overfeers shall within eight days after fuch notice (on like pain as the minister) repair to the chief magistrate, if such party was buried in a town corporate, or else to a justice of the peace: Which said justice or magistrate, on certificate from such minister, shall (on the like pain) forthwith grant a warrant (C) for the levying of the faid forfeiture on the goods of the parties before mentioned, rendring the over-

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WI ing plus all reasonable charges being first deducted; half of which

shall be to the poor, and half to the informer. f. 5.

8. And when the overfeers shall account, they shall give an account of the name and quality of every person interred within their parish from the time of their former account, and of such certificate as came to their hands from such minister, and of their levying the penalties, and of their disposal thereof; on pain of 5 l. to be levied by distress, by warrant of the justices, or two of them, to whom they shall account. And no overseers account shall be allowed, until they shall have therein accounted for the burials as aforesaid. f. 8.

### XIV. Against importation of woollen cloth.

No foreign woollen cloth shall be imported, on pain of forfeiture, and further punishment at the king's will. 11 Ed. 3. c. 3. 4 Ed. 4. c. 1. f. 7.

## XV. Encouragement of the exportation of woollen manufactures.

Woollen manufactures shall be exported custom free. 1183

### A. Affidavit for burying in woollen.

Westmorland. Be it remembred, that on the—day of

A. W. of—yeoman, and B. W.
of—yeoman, being two credible persons, do make oath, That
A. D. late of—in the parish of—in the county aforesaid; on the—day of this present month of—was not
put in, wrapt or wound up, or buried in any shirt, shift, sheet, or
shroud, made or mingled with slax, bemp, silk, bair, gold, or silwer, or other than what is made of sheep's wool only, or in any
cossin lined or faced with any cloth, stuff, or any other thing whatsoewer made or mingled with slax, bemp, silk, bair, gold, or silver,
or any other material but sheeps wool only.

A. W. B. W.

J. P.

### Woollen manufadure.

B. The minister's notice of affidavit of burying in woollen not being brought.

Westmorland. { To the churchwardens and overseers of the poor of the parish of —— in the said county.

A. M. minister of the parish of—aforesaid, in the county aforesaid, do bereby give you notice, that on the—day of the body of A. D. was buried within the said parish, and that no person whatsoever bath brought to me any affidavit pursuant to the statute made for burying in woollen. Witness my hand the—day of—

C. Warrant to levy the penalty for not burying in woollen.

Westmorland. { To the constable of

WHERE AS it duly appears to me one of his majefly's justices of the peace for the Said county, that A. D. late of \_\_\_\_ deceased, on the \_\_\_\_ day of \_\_\_ was buried within the parish of \_\_\_\_ in the county aforesaid, and that no affidavit bath been brought within eight days afterwards to the minister of the said parish that the said A. D. was buried in no other materials but sheep's wool only, pursuant to the statute in that case made; [and whereas it also duly appeareth unto me, that be the faid A. D. had no goods and chattels at the time of his death as aforesaid, and that he the said A. D. did die in the bouse of A.O. of \_\_\_\_\_ yeoman, at \_\_\_\_ aforesaid, in the county aforesaid; Or, that A.O. of \_\_\_\_ yeoman, had a hand in, or did order and dispose, the putting the said A. D. deceased in a Shirt, Bift, Sheet, Shroud, or coffin, contrary to the form of the Statute aforesaid; or, that A. M. of \_\_\_\_\_ yeoman, at the time of the death of bim the faid A. D. was master of bim the faid A. D. and that he the faid A. D. servant to the faid A. M. did that A. F. of \_\_\_\_\_ yeoman, was father to the said A. D. and that he the said A. D. did die in the samily of him the said A. F.] These are therefore to command you forthwith to levy the sum of 51. by distress and sale of the goods and chattels which he the faid A. D. had at the time of his death [Or, of the goods and chattels of him the said A. O.] rendring the overplus to \_\_\_\_\_ your rea-Sonable charges being first deducted: One moiety of which said Sum of 51. you shall pay to the overfeers for the use of the poor of the said parish where he the said A. D. was buried, and the other moiety to A. I. of \_\_\_\_\_ yeoman, who informed me of the faid offence, and did sue for the said forfeiture. Herein fail you not. Given under my hand and seal at \_\_\_\_\_ in the county aforesaid,

Wreck.

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### Mireck.

WRECK of the fea, in legal understanding, is applied Wreck, whate to fuch goods, as after shipwreck at sea, are by the fea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admiral, but to the common law."

2 Inft. 167.

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2. None of those goods which are called jetfam (from being Jetfam, flotfam, cost into the sea while the ship is in danger, and after perisheth) & lagan. or those called florfam (from floating upon the sea after shipwreck) or those called lagan or ligan (goods thrown overboard before the shipwreck, which fink to the bottom of the sea) are to be esteemed wreck, so long as they remain upon the sea, and are not cast upon the land by the sea; but if any of them are cast upon the land by the fea, they are wreck. Wood 367.

3. Also, by the 3 Ed. 1. c. 4. Where a man, a dog, or cat Living creature escape quick out of the ship, the ship or any thing therein shall not escaping.

be adjudged wreck of the fea.

A man, a dog, or a cat] Which statute being but declaratory of the common law, these three instances are only put for examples; for besides these two kinds of beasts, all other beasts, fowls and other living things are understood, whereby the property of the goods may be known. 2 Inft. 167, 168.

Escape quick out of the ship If a ship be ready to perish, and all the men therein (for the safeguard of their lives) leave the ship, and after, the forsaken ship perisheth; if any of the men be faved and come to land, the goods are not loft. 2 Inft. 167.

4. By the 17 Ed. 2. The king shall have wreck of the Sea To whom the wreck be-

throughout the realm.

And the cause wherefore originally wreck was given to the crown, longeth. flood upon two main maxims of the common law. 1. That the property of all goods whatfoever must be in some person. 2. That fuch goods as no subject can claim any property in, do belong to the king by his prerogative. 2 Inft. 167.

5. The taking of goods whereof no one had a property at the Seizing wreek time, is not felony; and therefore he who takes away a wreck, not felony. before it is seized by the person who has a right thereto, is not guilty of felony, and shall only be punished by fine, or the like. 1 Haw. 93, 94. That is to fay, he is not guilty of felony by the common law; but it is otherwise by the statutes here following.

6. To preserve ships stranded, or in distress, from being plun. Affisting ships dred by the country people, it is enacted by the 12 An. ft. 2. in diffress. c. 18. and the 26 G. 2. c. 19. as follows: (Which faid act of the 12 An. is required to be read in the church four times a year, in

all fea port towns, and on the coaft.) The justice of the peace, mayor, bailiff, collector of the customs, or chief constable, who shall be nearest to where any ship

shall be stranded or cast away, shall forthwith give publick notice Rr 2

for a meeting to be held as foon as possible, of the sheriff or his deputy, the justices of the peace, mayors, coroners, and commissioners of the land tax, or any five of them, who shall employ proper persons for saving the same; and shall command the constables nearest to the sea coasts, to call together as many men as shall be thought necessary, to assist. And also the officers of excise shall be proper officers to put these acts in execution. And within the cinque ports, the lord warden of the cinque ports, the lieutenant of Dover castle, the deputy warden of the cinque ports, the judge official, and commissary of the court of admiralty of the cinque ports, shall put the same in execution there.

And any justice of the peace, in the absence of the high sheriff,

may take sufficient power of the county.

And they may command all ships at anchor near, to assist; and if the officer of such ship shall refuse or neglect, he shall forfeit

100 l. with costs, to the officer of the ship in distress.

And to prevent confusion, and contradictory orders, the perfons assembled to save any vessel or goods as aforesaid, shall conform in the sirst place to the orders of the master or other officer or owner, or persons employed by them; and for want of their presence or directions, then to the orders of the officers of the customs, next to those of the officers of excise, then of the sheriff or his deputy, then of a justice of the peace, then of a mayor, then of the coroner, then of a commissioner of the land tax, then of a chief constable, then of a petty constable; and any person acting contrary to such orders, shall forfeit not exceeding 5 st. to be levied by warrant of one justice, and in case of non-payment, to be committed to the house of correction, not exceeding three months.

And every such sheriff, justice, mayor, coroner, lord of a manor, under sheriff, or commissioner of the land tax, shall have 4 s,

a day during his attendance, out of the goods faved.

And if any Person, not impowered as above, shall endeavour to enter on board such vessel, or shall deface the marks of the goods; he shall within 20 days make double satisfaction to the party grieved, at the discretion of the two next justices; or in default thereof, shall be sent by them to the next house of cor-

rection, to be kept to hard labour for 12 months.

And if any persons not employed by the master or owner, shall in the absence of persons employed by them, save any vessel or goods, and cause them to be carried for the benefit of the owners into port, or any near adjoining custom house, or place of safe custody, immediately giving notice thereof to a justice, magistrate, custom house or excise officer; they shall be intitled to a reasonable reward for the same, to be adjusted by three neighbouring justices, which may be recovered by action at law: Or the same may be adjusted by the officers abovementioned. And if the said salvage (and the charges of 4 s. a day as abovementioned) shall not be paid in 40 days after the services performed, the officer of the customs concerned in the salvage, may borrow or raise so much money as shall pay the same, upon a bill or bills of sale, under his hand and seal, of the vessel, or

cargo,

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cargo, or part thereof; redeemable nevertheless on payment of the

principal, and interest at 4 per cent.

And more generally, by another clause it is enacted, that all persons who shall act or be employed in preserving any such vessel or cargo, shall be paid a reasonable salvage, to be adjusted by three neighbouring justices as abovementioned.

And if any person shall be assaulted, beaten, and wounded, in the exercise of his duty in the salvage of any vessel or goods, the offender, on conviction by indictment at the assizes or fessions, shall be transported for seven years. And such persons molesting

the preservation of the ship may be repelled by force.

And if any person shall plunder, steal, take away, or destroy any goods belonging to such ship in distress, or which shall be wrecked or stranded (whether any living creature be on board or not) or any tackle, provision, or part of such ship; or shall beat or wound, with intent to kill, or otherwise wilfully obstruct the escape of any person endeavouring to save his life from such ship, or the wreck thereof; or shall put out any salse light, with intent to bring any vessel into danger; he shall be guilty of selony without benefit of clergy. Provided that when goods of small value shall be stranded or cast on shore, and stolen without circumstances of cruelty, outrage, or violence; the offenders may be prosecuted for petit larceny only.

And if any person shall make any hole in any such ship in distress, or steal any pump belonging thereto, or wilfully do any thing tending to the immediate loss of such ship, he shall be guilty

of felony without benefit of clergy.

And if oath be made before a magistrate, of any such plunder or thest, or of the breaking of any such ship, and the examination in writing thereupon taken be delivered to the clerk of the peace, he shall cause the offender to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining, in which adjoining county any indictment may be laid by any other prosecutor; and if the sact be committed in Wales, then the prosecution shall or may be carried on in the next adjoining English county; and the necessary charges of such prosecution shall be paid by the treasurer of the county where the fact shall be committed, as the justices in sections shall order: and if the clerk of the peace shall neglect his duty herein, he shall forseit 100 st. to him who shall sue.

And one justice, upon information on oath, of any part of the cargo or effects of any vessel lost or stranded near the coasts, being unlawfully conveyed, or concealed, or of some reasonable cause of suspicion thereof, may issue his warrant for searching as in other cases of stolen goods: And if the same be found in any house or other place, or in the possession of any person not legally authorised to have the same; and the owner or occupier, or person in whose possession the same shall be found, shall not immediately upon demand deliver the same; such justice, on proof of such resusal, shall commit him to the common gool for six months.

or till he shall have paid treble value thereof.

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And if any person shall offer to sale any such goods unlawfully taken away, or reasonably suspected so to have been, the person to whom they are offered, or any officer of the customs or excise, or constable, may seize the same; and shall, with all convenient speed, carry the same, or give notice thereof, to one justice; and if such person shall not in ten days make out his property therein, to the satisfaction of the justice, they shall be delivered over to the rightful owner, on payment of a reasonable reward (to be ascertained by the justice) to the seizor; and the justice may commit such offender to the common gaol for six months, or till he shall have paid treble value. And if any person shall discover to any justice, magistrate, custom house or excise officer, where any such goods are wrongfully bought, sold, or concealed, he shall be intitled to a reasonable reward, to be adjusted as the salvage:

And the officer of the customs who shall act in preferving any vessel or cargo, shall, as soon as conveniently may be, cause or procure all persons belonging to the vessel, and others who can give an account thereof, to be examined on oath before a justice, as to the name or description of the vessel, the names of the masser and owners, and of the places from or to which the vessel was bound, and the occasion of the distress; which examination the justice shall take in writing, and shall deliver a copy thereof to the faid officer of the customs, who shall forthwith transmit the same to the secretary of the admiralty, who shall publish the same in the next London gazette, or so much thereof as shall be necessary for the information of the persons interested or concerned therein.

And if no person shall appear to claim the goods saved, the officer of the customs shall apply to three of the nearest justices, who shall put him or some other responsible person in possession, taking an account in writing of the goods, to be signed by the said officer; and if they be not claimed in a year, they shall be sold (and if perishable, shall be forthwith sold) and the money returned to the exchequer, till claimed by the owner.

But this shall not prejudice the right of any lords of manors, or others, lawfully claiming wreck, or goods flotsam, jetsam, or lagan.

### CONCLUSION.

TAVING thus finished the work proposed; it may be requisite, upon the whole, to subjoin one single resection, which will occur to every reader, in perusing almost every one of the larger titles of this book; and that is, concerning the possibility and expediency of reforming the statute law. The statutes at large, from the very nature of the thing, have in process of time become very cumbersome, and very intricate. They are

not to be purchased but for a larger sum of money, nor to be understood without a greater expense of time, than a wise man would often chuse to employ in that way.

The course to be taken in that matter feems to be this:

First, actually to repeal all those statutes, and parts of statutes, which are wirtually repealed by subsequent contradictory statutes.

Secondly, to repeal all those statutes which are obsolete, and grown out of use, by the alteration of times and circumstances.

Thirdly, to repeal all those statutes, which being neither contradicted by subsequent statutes, nor become obsolete, yet are rendred useless by subsequent statutes enacting the same things over again, with alterations and amendments.

Fourthly, to repeal, or alter, all those statutes which are fri-volous; that is, which possibly cannot, or probably never will be executed: such as those which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no such officer; or which prohibit an offence under a very small penalty to be recovered in the courts at Wistminster, where the reward will not countervail the expence of recovering it.

Fifthly, to omit all those statutes, which although enacted to be publick statutes, yet are only of private concern; such as those for bridges in particular places, or paving the streets in such a market

sixthly, as to the rest, to lay all the statutes, and clauses of statutes together, which relate to the same subject, and out of the whole to compose one, two, or more uniform and consistent statutes; and then to repeal all those other, as workmen destroy the

I know but of one material objection, against this method of proceeding; and that is, that the law being now for the most part well settled upon the statutes, notwithstanding their acknowledged disorder and confusion, this would tend to unsettle all again, by breaking the connexion which there is between one statute and another, and one part of a statute and another, altering the words and phrases, and after all perhaps not much mending the matter, since it is possible that the new statutes may be as liable to objections as the former were.

But this is an argument, not so much against the thing it self, as against the manner in which it may be executed. As to breaking the connexion, it is certain that for the most part there is no connexion; and where there is, that may easily be preserved. And it ought to be laid down as an invariable rule, to retain as much as possible the identical words and sentences of the former statutes; only rejecting what is superstuous, inserting the clear law as it now stands, and putting the same into a form more regular, concise, and easy. And this seemeth no way impossible to be done, by any person of a tolerable understanding, endowed only with a clear head, and much patience.

#### ERRATA.

The reader is defired with his pen to correct the following errata, most of which do affect the fense; other smaller mistakes are left to the reader's candour.

#### VOL. I.

Page 21. line 43, for cb. 31. read ch. 13. P. 37. 1. 32. for in parish, r. in the parish. P. 45. 1. 2. for year are, r. year, they are. P. 62. 1. 18. for parishoners, r. parishioners. P. 90. 1. 39. for made, r. named. P. 94. 1. 12. for of man, r. of a man. P. 103. 1. 17. for yeoman, r. yeomen. P. 106. l. 9. for without, r. within. P. 191. 1. 44. for precedent, r. a precedent. P. 193. l. 24. for pull of, r. pull off. P. 232. l. 17. for goods, r. good. P. 292. 1. 29. for rates, r. rights. P. 330. 1. 15. for 2 G. 2. r. 1 G. 2. P. 358. 1. 10. for f. 11. r. f. 10. P. 374. l. 48. for f. 16, 27. r. f. 16, 17. P. 450. 1. 24. for can no, r. can be no. P. 485. 1. 10. for tade, r. take. P. 487. 1. 17. for of king, r. of the king. P. 489. 1. 21. for other, r. their. P. 496. l. 17. for in an river, r. in any river. P.497. 1. 32. for can, r. shall.

#### VOL. II.

P. 20. 1. 1. for must first, r. must be first.
P. 40. 1. 26. for no textend, r. not extend.
P. 65. in the margin, blot out the words The value.
P. 69. 1. 35. for ages if 21, r. ages of 21.
P. 117. 1. 27. for he, r. be.
P. 124. 1. 16. for ar, r. or.
P. 219. 1. 8. for the, r. he.
P. 250. 1. 32. for an, r. and.
P. 261. 1. 18. for whither, r. whether.
P. 301. 1. 26. for townwips, r. townships.

P. 539. 1. 20. for by plaintiff, r. by the plaintiff.

P. 560. l. 29. for in, r. to. P. 566, l. 20. for and, r. an.

If there be more errata occurring in pages subsequent to these here numbred, as also in the introduction, which the author's distance hath rendred impossible for him to point out, the reader is prayed to correct them according to his candour.